UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481

- -x

In the Matter of:

DELPHI CORPORATION,

Debtor.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

January 12, 2007

10:05 AM

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

HEARING re Notice of Hearing Notice Of Sufficiency Hearing With Respect To Debtors' Objection To Proofs Of Claim Nos. 257, 264, 288, 297, 1271, 1272, And 1334 filed by John Wm. Butler Jr. on behalf of Delphi Corporation. with hearing to be held on 1/12/2007 at 10:00 AM at Courtroom 610 (RDD.

HEARING re Notice of Hearing Notice Of Sufficiency Hearing With Respect To Debtors' Objection To Proofs Of Claim Nos. 12129 And 14370 filed by John Wm. Butler Jr. on behalf of Delphi Corporation. With hearing to be held on 1/12/2007 at 10:00 AM at Courtroom 610 (RDD.

HEARING re Notice of Hearing Notice Of Sufficiency Hearing With Respect To Debtors' Objection To Proof Of Claim No. 2856 filed by John Wm. Butler Jr. on behalf of Delphi Corporation. with hearing to be held on 1/12/2007 at 10:00 AM at Courtroom 610 (RDD).

HEARING re Notice of Hearing Notice Of Sufficiency Hearing With Respect To Debtors' Objection To Proof Of Claim No. 11911 filed by John Wm. Butler Jr. on behalf of Delphi Corporation. With hearing to be held on 1/12/2007 at 10:00 AM at Courtroom 610 (RDD).

HEARING re Notice of Hearing Notice Of Sufficiency Hearing With Respect To Debtors' Objection To Proof Of Claim No. 7075 filed by John Wm. Butler Jr. on behalf of Delphi Corporation. With hearing to be held on 1/12/2007 at 10:00 AM at Courtroom 610 (RDD).

HEARING re Notice of Hearing Notice Of Sufficiency Hearing With Respect To Debtors' Objection To Proof Of Claim No. 11892 filed by John Wm. Butler Jr. on behalf of Delphi Corporation. with hearing to be held on 1/12/2007 at 10:00 AM at Courtroom 610 (RDD).

HEARING re Notice of Hearing Notice Of Sufficiency Hearing With Respect To Debtors' Objection To Proof Of Claim No. 13411 filed by John Wm. Butler Jr. on behalf of Delphi Corporation. with hearing to be held on 1/12/2007 at 10:00 AM at Courtroom 610 (RDD).

HEARING re Notice of Hearing Notice Of Sufficiency Hearing With Respect To Debtors' Objection To Proof Of Claim No. 9674 filed by John Wm. Butler Jr. on behalf of Delphi Corporation. with hearing to be held on 1/12/2007 at 10:00 AM at Courtroom 610 (RDD) (Attachments: # (1) Claims Procedure Order).

HEARING re Notice of Hearing Notice Of Sufficiency Hearing With Respect To Debtors' Objection To Proof Of Claim No. 3886 filed by John Wm. Butler Jr. on behalf of Delphi Corporation. With hearing to be held on 1/12/2007 at 10:00 AM at Courtroom 610 (RDD) (Attachments: # (1) Claims Procedure Order).

HEARING re Notice of Hearing Notice Of Sufficiency Hearing With Respect To Debtors' Objection To Proof Of Claim No. 4321 filed by John Wm. Butler Jr. on behalf of Delphi Corporation. With hearing to be held on 1/12/2007 at 10:00 AM at Courtroom 610 (RDD) (Attachments: # (1) Claims Procedure Order).

HEARING re Notice of Hearing Notice Of Claims Objection Hearing With Respect To Debtors' Objection To Proof Of Claim No. 16322 filed by John Wm. Butler Jr. on behalf of Delphi Corporation. with hearing to be held on 2/14/2007 at 10:00 AM at Courtroom 610 (RDD) (Attachments: # (1) Claims Procedure Order)(Butler, John) Docket Text Modified on 12/12/2006 (Bush, Brent).

HEARING re Notice of Hearing Notice Of Claims Objection Hearing With Respect To Debtors' Objection To Proof Of Claim No. 2479 filed by John Wm. Butler Jr. on behalf of Delphi Corporation. With hearing to be held on 2/14/2007 at 10:00 AM at Courtroom 610 (RDD).

HEARING re Notice of Hearing Notice Of Claims Objection Hearing With Respect To Debtors' Objection To Proof Of Claim No. 13409 filed by John Wm. Butler Jr. on behalf of Delphi Corporation. with hearing to be held on 2/14/2007 at 10:00 AM at Courtroom 610 (RDD).

HEARING re Notice of Hearing Notice Of Claims Objection Hearing With Respect To Debtors' Objection To Proof Of Claim No. 2558 filed by John Wm. Butler Jr. on behalf of Delphi Corporation. With hearing to be held on 2/14/2007 at 10:00 AM at Courtroom 610 (RDD).

HEARING re Notice of Hearing Notice Of Claims Objection Hearing With Respect To Debtors' Objection To Proof Of Claim No. 14245 filed by John Wm. Butler Jr. on behalf of Delphi Corporation. With hearing to be held on 2/14/2007 at 10:00 AM at Courtroom 610 (RDD).

HEARING re Notice of Hearing Notice Of Change Of Omnibus Hearing Date filed by John Wm. Butler Jr. on behalf of Delphi Corporation. With hearing to be held on 1/12/2007 at 10:00 AM at Courtroom 610 (RDD).

HEARING re Motion to Extend Time Motion For Order Under 11 U.S.C. Section 1121(d) Extending Debtors' Exclusive Periods Within Which To File And Solicit Acceptances Of Reorganization Plan filed by John Wm. Butler Jr. on behalf of Delphi Corporation. With hearing to be held on 1/12/2007 at 10:00 AM at Courtroom 610 (RDD) Responses due by 1/4/2007.

HEARING re Third Omnibus Objection to Claims with hearing to be held on 11/30/2006 at 10:00 AM at Courtroom 610 (RDD) Objections due by 11/24/2006, filed by John Wm. Butler Jr. on behalf of Delphi Corporation.

HEARING re Motion to Extend Time Motion For Order Under 11 U.S.C. Section 1121(d) Extending Debtors' Exclusive Periods Within Which To File And Solicit Acceptances Of Reorganization Plan filed by John Wm. Butler Jr. on behalf of Delphi Corporation. With hearing to be held on 1/12/2007 at 10:00 AM at Courtroom 610 (RDD) Responses due by 1/4/2007.

HEARING re Motion to Allow Claims Motion of Cadence Innovation, LLC to Allow and Pay Administrative Priority Claim filed by Dennis J. Connolly on behalf of Cadence Innovation, LLC. With hearing to be held on 1/11/2007 (check with court for location) Responses due by 1/4/2007.

HEARING re Debtors' Fifth Omnibus Objection to Claims with hearing to be held on 1/11/2007 at 10:00 AM at Courtroom 610 (RDD) Objections due by 1/4/2007, filed by John Wm. Butler Jr. on behalf of Delphi Corporation.

HEARING re Objection to Motion Limited Objection to Motion for Order Under 11 U.S.C. s. 1121(d) Extending Debtors' Exclusive Period Within Which to File and Solicit Acceptances of Reorganization Plan (related document(s)[6285]) filed by Judith Elkin on behalf of Highland Capital Management L.P.

HEARING re Response Debtors' Omnibus Reply In Support Of Debtors' Fourth Omnibus Objection Pursuant To 11 U.S.C. Section 502(b) And Fed. R. Bankr. P. 3007 To Certain Duplicate And Amended Claims filed by John Wm. Butler Jr. on behalf of Delphi Corporation. With hearing to be held on 1/12/2007 at 10:00 AM at Courtroom 610 (RDD).

HEARING re Notice of Hearing Proposed Fourteenth Omnibus Hearing Agenda filed by John Wm. Butler Jr. on behalf of Delphi Corporation. With hearing to be held on 1/12/2007 at 10:00 AM at Courtroom 610 (RDD).

Transcribed by: Pnina Eilberg

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P R O C E E D I N G S

THE COURT: Please be seated. Okay. Delphi Corporation and this is the continuation of the hearing on the debtor's motion for approval of the equity commitment agreement and the PSA.

MR. BUTLER: Good morning, Your Honor, Jack Butler along with my colleagues Kaylayn Marfioti and Al Hogan here again on behalf of the debtors for the hearing.

Your Honor, before proceeding with the debtor's closing argument, two items. One, we have circulated to counsel for the remaining objectors and we have provided to the Court a black lined version of some change pages to the EPCA. The import of which would be to eliminate in 12(C) of the EPCA any opportunity of the plan investors to terminate the EPCA if they terminate the PSA. So that there's no longer a cross termination right in favor of the investors and I would like to have that added to the record as Exhibit 123 and admitted into evidence with Your Honor's permission.

(Black Lined Version of EPCA was hereby received as Debtor's Exhibit 123 for identification, as of this date.)

THE COURT: Okay. That's fine.

MR. BUTLER: The other item I have, Your Honor, for the Court is marked as Exhibit 124, which has been circulated. It is an updated objection chart to show the status of where we are with all objectors having settled except the equity

committee, Highland and the US Trustee.

THE COURT: Thank you, Your Honor.

MR. PARKINS: Your Honor, we object to that admission. We don't agree with it. This is their representation --

THE COURT: Well actually, the chart -- as far as the chart is concerned, I don't think you need to submit that. I mean I -- the statements by the objecting unions and the debtors were, sort of, carefully worked out yesterday and stated on the record. And I don't want them to feel that they're going to have to --

MR. BUTLER: That's fine, Your Honor. That's all. We just prepared the updated chart.

THE COURT: Okay.

MR. BUTLER: The objections have -- are all withdrawn. We didn't, otherwise, change it from our reply.

THE COURT: Okay. I think the record's clear on that.

MR. BUTLER: Thanks.

MR. PARKINS: Thank you, Your Honor.

THE COURT: And the change to the commitment agreement, obviously, deletes the provision for the refund of any commitment fees as moot under -- under the --

MR. BUTLER: That's correct, Your Honor.

THE COURT: -- what had been 12(c) II, because now

they don't have the right to terminate in the first place.

MR. BUTLER: Correct, Your Honor.

THE COURT: Okay. All right. So why don't I hear, then, brief oral argument in respect of the motion.

MR. BUTLER: Your Honor, thank you. Your Honor, on behalf of the debtors, we're here today to seek now an order authorizing and approving the debtor's entry into the agreements that have been referred to in these hearings as framework agreements, or more specifically the equity purchase and commitment agreement and the plan framework support agreement, as those agreements have been amended as entered into evidence in this hearing.

These agreements are the product of more than five months of an intense effort and arms length process that has involved, among others, the debtors, various potential plan investors, General Motors Corporation and representatives of the debtor's statutory and ad hoc committees. And I think its important, just briefly, to talk about the process that got us to this point. Because, as the document, Exhibit 45, that's been admitted into evidence, there was, in fact, in the end of July, days before the STN motion was filed. And this is set forth in Exhibits 11 through 13 of the evidence. There was a discussion and an exchange between the company's lead independent director, the company's -- some of the company's officers, the chair of the official committee of unsecured

creditors that on the eve of filing the STN motion by the creditors committee, which has -- in which they would -- had that matter actually been heard they would have sought to have control over the claims against General Motors Corporation. There was a discussion about the importance of trying to find a path that would lead towards a resolution of, not only General Motors issues but ultimately of the transformation issues in this case.

It was really the chair of the creditors committee acting on behalf of the committee who had urged the company to set up a process that would, hopefully, lead to that result. And based on that encouragement and on, what was really the leadership that the chair of the creditors committee demonstrated reaching out to our lead director and our senior officers, there were discussions over the weekend of the -- at the end of July, July 28th, 29th, between counsel to the creditors committee, the equity committee and the debtors, all of which are contained -- or summarized in those exhibits, which lead to the establishment of framework meetings that began on August 1st.

And on August 1st, at that meeting, page 31 of that presentation, the company got up and said to its stakeholders, and General Motors wasn't a part of this particular meeting and said, look, we have a choice to make. As near as the company can tell, there are six paths that we are capable of pursuing

here. And let us describe the paths to you and give you the company's thought. And one path was -- three of the paths were related to reaching a near term labor and General Motors consensual resolution and three paths said, look that's not going to be possible, what should we do.

And as we went through and explained the paths, the debtor's expressed a preference for path one. The debtor's said, we think the best thing that could happen to the estate is let's figure out a labor deal now, but that will require for you sorting out a bifurcated arrangement with General Motors. In order for them to do their labor transformations they're going to want a release from us. The company's prepared to consider that but we have to deal with the claims that they have against the estate later in a plan process, which would occur after we suspended the litigation and negotiated a claims resolution process.

One of the things, I think Your Honor; our stakeholders can uniformly agree is that none of them liked that path. Our creditors committee, our equity committee, General Motors, all of our major stakeholders said to us, in that -- on the financial side of the house, in terms of these things. They basically said look, we really need you to think about going along path three. And path three was a path that said, what you need to try to do is reach a comprehensive deal. And a comprehensive deal involving labor and General Motors

means that from the standpoint of General Motors they said, we are only interested in a net recovery. We want to understand what our next exposure -- or exposure because they're not -- at the end of the day, their exposure is far more than their recovery. They said we want to know what our net number is in order to do a deal. And our committee said we're not prepared to tell General Motors what we think their net number is unless we have a framework of understanding of what our recoveries will be.

And faced with that, the company moved forward with a framework set of discussions that began late -- two days later with General Motors in the room. And there were -- and the record is clear and Your Honor has many exhibits that point to the process that occurred over the following five months leading up from August 1 through -- up to December 18th, as the steps that were taken and the process that occurred as the company proceeded along that line trying to understand that General Motors wanted to understand that exposure. The committees wanted to understand net recoveries. Essentially, in this case, our major stakeholders wanted to understand how the pie was going to be served before we had finished baking it. In fact, before it was even in the oven.

But the complexity of this particular case, at the end of the day, the debtor's conceded required that approach. This case as I -- as Mr. Miller said in his testimony and his

experience over the many years he served as the chief executive officer of different companies is among the most complex -- he testified was the most complex he's ever dealt with and certainly is, I think, the most complex I've dealt with in my career, trying to make sure that we allow the largest manufacturing company ever to be in bankruptcy with global operations across the planet and 185,000 employees to actually continue to operate, continue to supply the automotive industry. Remembering that if we falter, in Mr. Miller's words, if we do it badly it's not just a problem for General Motors; Delphi shuts down the global automotive industry. And how do we figure out how to work through these processes in a way that will allow the company to proceed.

So we followed path three. Our stakeholders said, follow path three, that's the path we followed. That leads to a series of framework discussions in which things became clearer as we moved forward. Which is, we had a framework document, and there's been testimony and the record talks about different sections of it. The section that got the most developed and finally -- essentially agreed upon was the distribution element of the framework. The transformation of contributions from General Motors in their view, as we understood it, and in the debtor's view, ultimately, couldn't be finally resolved until ultimately we had labor done. And so without being able to have a line of sight to labor, from

General Motors perspective, so they could understand what their contributions would be for that, they couldn't ultimately finish the transaction with us. And so we moved towards December and we came up with the practical, which is how do we communicate to the global community, continue to have the support of our customers, other than General Motors. Keep in mind that as Mr. Miller testified yesterday, two thirds of our new business comes from customers other than General Motors for periods in 2008 and 9 and 10, and 11. And if we disrupt that supply chain, that's a fundamental value destruction proposition for this company.

How do we be able to, sort of, move forward in this. And ultimately, after the thirty-seven some odd meetings that Mr. Miller testified the board held and following this process each step along the way. The board authorized the company to file the framework motions that are before the Court. But I think it's really important to understand the process that was here. And I'll go through the exhibits in a few minutes. This wasn't something that was dreamt up by one -- one constituency here on a Saturday afternoon and motions were filed on Monday. This has been a process that has been collaborative, difficult, complex, controversial at times, but a process that has moved forward very, very carefully since the middle of last year. And Your Honor has had some glimpse into that because at the same time, the company has done something that in my experience

has not been done in any other large complex case, where 1113 and 1114 motions, which congress assumes will be disposed of within thirty days thereof or thirty to forty-five days their filing, have in fact been moved from one hiatus to the next hiatus to the next. Tracking this process along with the companion 365 litigation against General Motors and we've had more than a dozen chambers conferences with Your Honor as that has been trying to match the balancing, as Mr. Miller always calls it, the balancing of what's the appropriate thing to do here from the debtor's perspective to maximize value for our stakeholders.

As the company then presented this, I think the next item I wanted to address, Your Honor, is certainly what is the standard here? What are we seeking? This is not, and we disagree respectfully with the U.S. Trustee, a confirmation hearing. If one thing the record made very clear in the case and the evidence is uncontroverted on is, that there is no plan here. There is the -- even the objectors have testified in their view -- their testimony and their part of the record said that there is no value here unless there are consensual labor and General Motors transactions and those aren't here.

And so what we've done -- or tried to do is find that rock Mr. Miller talked about in his testimony. That rock that we can stand on to try to move this company forward and this reorganization forward. And in doing so, we're asking Your

Honor to authorize us to enter into and perform the transactions contemplated and the conditions contemplated under the EPCA and the PSA and ask you to authorize it under sections 363 of the Bankruptcy Code. Which, as everyone knows in this room, allows the debtors to use property of the estate, other than in the ordinary course of business after notice in the hearing, if the debtors demonstrate sound business justification for the proposed usage?

And during the course of this case we've had a lot of colloquy, Your Honor, with the debtors over Your Honor's formulation of the Orion Pictures Corporation and other controlling precedent in this circuit. And we have come to know and respect this Court's view that this is a summary proceeding. And that once the debtor's articulate a valid business justification for the proposal, there's a presumption that arises that the board's decision was undertaken on an informed basis in good faith. And the honest belief that its actions were made in the best interest of the company.

But if the board's judgment is challenged, and objectors come forward with specific evidence to support the challenge. Then, Your Honor, in some respects becomes a thirteenth direct. And Your Honor looks at the evidence and is faced, frankly, with the very same challenge Mr. Miller talked about in his testimony. Not the ability to decide whether any particular provision is objectionable because the debtor's

concede there are objectionable provisions in this document. There are things we tried to get. The evidence is replete with things we tried to achieve and were unable to. The question is, Your Honor is faced with, is the same question our directors debated and ultimately that Mr. Miller testified to and what I thought was one of the most cogent and compelling recitations of corporate governance that I've had the privilege of hearing in a courtroom. Where he went through and explained the very careful balancing that the Board had to do, mindful that their decision was to say yes or no. They weren't given the opportunity -- have the opportunity to say, yeah, I like article three but I don't like article five. And gee, wouldn't it be nice if article 7.B -- 3 B was different. We all feel that way. I feel that way. That's not, in fact, what's available to us.

And clearly, we -- at least our view of Orion and it's progeny is that the evidence is properly debatable and where reasonable minds may differ about the prudence of the proposed court of action, we believe that the precedent in this district -- in this circuit, would guide the Court to approve the debtor's judgments as they were made. And we believe that's the -- we believe that's the appropriate standard. We point out that the only thing we're asking Your Honor to do today is to permit us to -- to authorize us to enter into and perform under the EPCA and the PSA. There is much more wood to

be chopped in this case. Many more hurdles for the debtors with their stakeholders to overcome. But I think there are a few things in the record that are, I thought, extraordinary in that they were completed uncontroverted and not only uncontroverted but in fact in the testimony of Mr. Daugherty, many of these items were reconfirmed. And Mr. Daugherty not only didn't quibble with the debtor's views regarding the value proposition that there was little or no value, you know, there was reduced value. I think he said little or no value. If there weren't consensual GM and labor deals. But he also made a point of not quibbling with our timetable. That we need to emerge before -- if we possibly can, prior to the third quarter of this year and not get ourselves immersed in the very complex quadrennial labor contract negotiations between the unions and the UAW leading those negotiations with GM and Daimler Chrysler and Ford.

When you look at the evidence here, in light of the standard, we believe that the evidence is overwhelming. We're mindful that Your Honor only has to find that we have carried our burden by preponderance. Because you balanced, if you ultimately believe this judgment is a 50.1, 49.9 balance, the company still prevails. But we actually believe that the uncontroverted nature of the evidence is overwhelming.

I'd ask you, when you think about this, Your Honor, reflect on it, to reflect back on the black lines that are in

exhibits 6 through 9 of the evidence which show the first documents the plan investors gave the company and the documents we filed with this court. And then add the black lines that have been put into evidence during the course of this hearing as further adjustments have been made, settling with the creditors committee, the ad hoc committee and other stakeholders including the black line that was announced this morning. I don't think there can be any conclusion other than this is a fully negotiated commercial contract and that it represents a compromise on all parties and ultimately the question is, is this fully negotiated, comprehensive, integrated set of agreements something that is in the best interest of the estate from the point of, did the Board exercise reasonable business judgment saying, I need that rock to stand on. I need to be able to move forward in this reorganization.

Lest there be any question about process, the evidence, I think, is also uncontroverted. If Your Honor looks at, not just the Board presentations, which would be Exhibits 14 through 34, but also the later exhibits that occurred in the meetings in early January, which would be exhibits -- I believe it is 114 through 118. I think the -- that process, particularly when you marry to it the weekly and certainly monthly involvement and consultation with statutory committees that's in evidence, looking at Exhibits 45 through 54 which

talk -- which indicate that from the beginning, when these six paths were presented to our statutory committees and they gave us guidance of where to pursue. Throughout this process we have considered their views.

Even with the equity committee and the company were unable to agree, the company took the extraordinary measure of actually putting together a chart of the equity committees objections and presenting it to the Board. In my experience, that is an extraordinary circumstance. Typically, you don't bring that into the board room. It was brought into the board room here to make very sure that, as Mr. Miller testified, that a contrary -- a contrarian view was presented to the Board so that they could fully consider it.

I also want to point, in this record, to what was a fairly extraordinary process that Your Honor crafted with the parties in the discovery process. And that is what's reflected in Exhibits 55 through 58 that have been admitted into evidence. Which is an opportunity for the company's statutory and official -- and ad hoc committees to be able to go through and outline anything they thought was an ambiguity. And I think our committees, from the debtor's perspective, took some license with that exercise but nonetheless presented a whole series of issues. And then that resulted and culminated in Exhibit 58, which was a response to those items. A statement of clarifications and other statements, a twenty-three page

document that was signed by the plan investors and General Motors and the company, that I thought went a long way to making sure that there couldn't be arguments later about anything. Not only that the debtor's had thought needed to b clarified but certainly that the -- our stakeholders believed in that process needed to be clarified.

So I think, Your Honor, when one looks at the evidence and weighs it, the uncontroverted evidence is overwhelming. But I do focus on items like the value proposition and the very real risk in this case for value destruction or the lack of value creation, however one wants to look at it, if we're not able to go forward here. I emphasize the timetable issues that we talked about. I emphasize the -- also the corporate governance process that Mr. Miller testified to when he was called as a hostile witness by the opposition to this.

I also think, Your Honor, when one looks at the objections, and I'm not going to go through each one of them unless Your Honor has specific questions, we did summarize our positions in our papers and I'll stand on the exhibits that was filed. But I do think it is important to note, on this record, that as we sit here before -- today in closing arguments that there's not a single creditor of this estate, save Highland, who is opposing the relief requested here by the debtors. And it's important that we understand, as we all do, that the

debtor's have an obligation to maximize the enterprise value of this business for all of our stakeholders, taken as a whole. But it is a duty owed to everyone collectively and it is also, I think, not only a truism but a reality that when one measures those responsibilities against the issue of taking risk and risk proposition, that the lower someone is in the absolute priority chain, the more risk that party or that constituency wants the debtors to take in order to be able to obtain what that constituency believes is appropriate value for them.

I wish it were so easy for a board to do that. In fact, that's not what the Board is obligated to do as a matter of law. A board's obligation, a company's obligation is to look at the whole picture, the totality of the circumstances and to understand that, as Mr. Miller and Mr. Sheehan testified to, the importance of not only having a rock to stand on but to have a transaction to move forward with. Understanding, all along, that Delphi has and will -- has exercised and will continue to exercise its fiduciary responsibilities to consider superior alternatives to the plan investors' transaction subject to the EPCA and the PSA.

So that really relates -- brings down a question here. One way to crystallize this question, particularly in light of the limitations of liability that are set forth in the EPCA is, is the debtor's view, as Mr. Miller said because he sort of boiled it down, you know, he didn't get into the, you

know, are there seventeen ways to terminate this thing or not, but he said to you in his testimony, very clearly, that the Board understood, considered, evaluated and believed it was appropriate to subject this estate to the potential of losing or expending a significant amount of resources on a transaction that might not ultimately close. Because in weighing that against the other alternatives and balance -- and when one balances it, the Board of Directors thought that the potential for value destruction or lack of value creation and the alternative was far, far more than moving forward in this process. As they weighed it, the decision to move forward in this process was, in fact, the decision that they thought was in the best interest of their stakeholders and fulfilled their responsibilities to maximize enterprise value.

I would also note, Your Honor, and because I think it is significant, I want to say a word about General Motors Corporation. General Motors Corporation is a very significant factor in this Chapter 11 case. And they have had, over the years, a controversial relationship with this company. And the debtor's themselves have acknowledged that the company has colorable claims against General Motors for some of that conduct over the years. On the other hand, there -- I think that any prudent, responsible evaluation of General Motors conduct during this Chapter 11 case has been one that concludes that they are searching, as the debtor's are and I believe most

of our stakeholders are, to a solution here that allows everybody to move forward and allows this company to emerge as continuing to be GMs largest single supplier anywhere on the face of the planet. And that isn't going to be easy. It's complex. Trying to get a piece of paper that General Motors would sign its name to, in the form of the PSA, was an extraordinarily difficult process. But the fact is, Your Honor, I think its important for the Court to know, as you presided over these hearings since October of 2005, there is a document that General Motors signed. And when people raise questions about ambiguities, within a week or ten days there was another document General Motors signed. And the process of working with the plan investors and the company, making sure those clarifications were accurate, making sure -- that was a -- that was a process where General Motors reacted in real time, worked constructively and worked in good faith. And the -- what we need to have the ability to do now is to move forward and to get this motion approved by Your Honor and to get these documents implemented and get about the business of trying to move this transaction to completion. And if there is a superior transaction that is executable and feasible that can be implemented and that brings more value, taken as a whole to our stakeholders, the debtors will, of course, exercise their fiduciary responsibilities in connection with that. Which is why we insisted in the PSA, for example, in article 2.4, the

debtor's have the opportunity to have discussions with General Motors and bring with them third parties in the event that the debtors in the exercise of their fiduciary duties thought that was appropriate. We would not accept, for example, a lock up that the plan investors wanted that did not have the fiduciary out that permitted -- I'm talking now about the lock up between General Motors and the plan investors. We would not accept a lockup that would not allow General Motors to talk to people that we brought to them in the exercise of our fiduciary duties. And so, we have tried to make sure there's a path here to do the responsible thing.

But I also think its importance, the guidance that Mr. Miller gave and Mr. Sheehan gave in their testimony. Which is, this is not just about capital? The truth of the matter is, Your Honor, you know, there are many, many, many, many sources of capital who have come to the debtors. And there's more than enough capitol. One of the good pieces of news of this whole reorganization is there is an oversupply of capital that wants to finance, invest, be a part of this transformation assuming that we can reach consensual transactions with labor and General Motors. Capital is not the issue. The issue is, how does one actually get there. How does one actually execute that transaction. And the judgments this Board of Directors has had to make and this management team has had to make is a judgment of how do you execute. Because if we can't find an

executable transaction and execute it before the fall, then even as Highland concedes there is a very material risk of value destruction. And we won't be talking, at that point in time, about what stakeholders at the bottom of the absolute priority chain will be receiving. We'll be talking about, you know, what the creditors will receive other than par plus accrued if we can, you know, as we rejigger how we will try to sort this out. And that is something that we all want to try to avoid. And the uncertainty of having the benefit guarantee expire and the covenant guarantee expire and have the -- throw that kind of wrench into our labor relations so that the whole prospect for our organized labor in this country working for Delphi that they have no idea what's going to happen to their benefits -- their health benefits and pension and so forth, are risks that will, at a minimum, be highly disruptive and greatly uncertain.

And those are risks that the company believes need and must be avoided if it can be. No promises with this, Your Honor. There's no guarantees here. I don't stand before you representing a company that says, sign me -- approve these pieces of paper and we'll be -- no worries, we'll be back in March or April with a disclosure statement of plan. A lot of work to be done. But if we can't get out of the starting block today, Your Honor, then everyone is going to have to think hard and wonder -- and our customers globally are going to have to

sort through what it is Delphi can do to get -- to go forward. And it will put the company, we think, into great uncertainty and great risk. Thank you.

THE COURT: Okay. Thank you.

MS. STEINGART: Good morning, Your Honor, Bonnie Steingart from Fried, Frank --

THE COURT: Good morning.

MS. STEINGART: On behalf of the equity committee. Among the objectors this afternoon the order will be, as we have discussed it, if it's acceptable to the Court, that I will go first and Ms. Leonhard from the U.S. Trustee's office will go second and Highland third.

THE COURT: Okay.

MS. STEINGART: Is that acceptable?

THE COURT: That's fine.

MS. STEINGART: Just to start with, Your Honor. You know the debtors have allies in wanting this transformation to work. Mr. Butler acts as if when someone objects, they're trying to put a stake in the heart of this company. We have, as great or greater interest then Mr. Butler does in seeing that there is a transformation, in seeing that there is a sale or some other transaction of Delphi to these plan investors or others, that creates an environment where there will be a successful manufacturing company for labor and for Delphi stakeholders. He does not have a monopoly on that market.

That is something that is very important to us. So the fact that we're objecting does not mean we're trying to get the debtor to a point where it's going to collapse.

There is also a tendency here, Your Honor, to every time there is a question raised there are the swords of GM that come out and are run into the heart of this company. If we don't do this, this will happen with GM. If we don't do this, this create of horrible will happen. There is here, and as I go through the testimony of the witnesses, Mr. Resnick admitted, I'll emphasize this later, that there's still a sixty day window -- a forty-five to sixty day window where people may come in and have a meaningful talk with this debtor and we'll get to that.

So, the issues that arise when these various horrible, terrorist tactics of all those who are objecting or what might happen if the debtors don't get precisely what they want, I think that this Court should ignore that.

The motions before the Court today seek approvals of agreement that will lead to the sale of Delphi to these plan investors. While the Court will need to review and approve other agreements, and eventually a disclosure statement and plan, these agreements set the stage for the structure of all other matters that will follow. So sometimes, even though we say that we're just talking about fees here, Your Honor, we're talking about more.

In our third supplemental objection we laid out the concerns of the equity committee that remained after the various, and Mr. Butler uses the word clarifications, but you and I know that they were changes and they were changes because there were things that were incorrect in those agreements. So there have been clarifications which are changes and there have been changes which are changes. And then there have been changes again. And at just five minutes before Your Honor came into this room, we got the last change, okay. Which was the elimination of the April 1st to disclosure statement walk away date. But I tell you, even though we are heartened by the change and we think that it's a good thing, it's not enough. And indeed it -- it demonstrates a pattern of dealing and pattern of bring solution that has made all of these issues more litigious and more lengthy then they need to be.

Issues that remain. First and foremost I think its important for the Court to recognize that the UCC and trade are now receiving par plus accrued. I am not at the bottom of the food chain. Delphi's public shareholders are on the top of that food chain. We are the only significant watch dog that remains in this case. And the value that's being talked about, that's being diverted, that's being diminished belongs to us. And while we might be tussling with GM, it exists. So Jack, excuse me -- I shouldn't say that Your Honor, Mr. Butler's characterization of somehow someone being at the bottom of the

food chain and throwing bombs because they don't care about what happens, that's just wrong. It's wrong on every level.

So what's left. Well the agreements may be less illusory, but there are significant issues because GM still has an absolute right to walk away. And having just gotten this fix five minutes ago, it's hard to figure out what the other implications of that would be but I will try.

Second, the alternate transaction fee is still inappropriate in the face of a lack of procedure for highering better offers. And when there's no alternative to just having whatever period remains elapse. Here we have Mr. Butler saying, well, you know, these agreements say that debtors can exercise their absolute minimum fiduciary duties and if someone comes pounding, knocking, breaking down our door maybe talk to them. When you give an alternate transaction fee, you have to have more than a begrudging attitude towards people who may come knocking at the door.

The value transfer to the plan investors is massive and unconscionable. And indeed in this little -- in this little summary that Mr. Butler tried to give you earlier today and that was properly objected to, the bidders have the temerity to refer to that value transfer as a return on investment. That's not a return on investment. That's a gift of 500 million dollars. The only way -- the only way that should remain in place is if there is a meaningful market test

so that this Court can come to the conclusion that the only way the debtor gets transformed is by giving away this value. I'm not saying you need to take it away necessarily. If there's no market test it should be gone. But if there's a real market test and no one can come to the table who will do this transaction without diverting so much value, then that's where the chips may fall.

Fourth, regardless of who the successful bidder is, the rights offering must be commenced at the later of the registration statement or confirmation of this plan. The ability to waive the rights offering must be eliminated from the agreements because even statements that people don't intend to enforce such agreements are cold comfort and certainly inadequate to protect Delphi's public shareholders.

I would just like to talk, very briefly, about what we learned from the witnesses and documents and how those facts apply to the legal issues.

THE COURT: Well, before we do that. I noted this during the trial. I have a very hard time seeing how, under this structure, which contemplates the investors getting their equity through a rights offering and under the PSA contemplates a rights offering and says that they won't go out and confirm a plan until the rights offering is complete, how -- how, as a practical matter, you could waive it? The only way you could waive it, I guess, is if the SEC says you can't do it. I mean,

I could see why they wouldn't take it out for that reason -- that very reason. But I don't see how they could just voluntarily choose to waive it given all the other elements of this transaction.

MS. STEINGART: Well, Your Honor, they can waive it because the agreements specifically say they could waive it.

THE COURT: But --

MS. STEINGART: You know --

THE COURT: -- there are other provisions of the agreement that would limit how they could waive it, I would think. Because it doesn't -- none of it works as a mechanical matter. They don't get their stock except through a rights offering.

MS. STEINGART: No, the investors, Your Honor, get their stock through a direct subscription. The investors do not get their stock through the rights offering.

THE COURT: But they're backstopping a rights offering.

MS. STEINGART: The direct subscription and the issuance of the shares take place regardless -- the issuance -- the existence of the shares is provided for in the agreement. And then once the shares exist some of them are provided to the public shareholders through the rights offering and the rest are taken up through direct subscription by the plan investors. And that's why the plan investors have a different registration

statement for their purchase then the public shareholders. So there is -- so in that -- in that process there is the ability for the company and --

THE COURT: Well, I'm sorry --

MS. STEINGART: -- the plan investors --

THE COURT: -- could we go over that point?

MS. STEINGART: Yeah.

THE COURT: Where is it described that there are going to be two different registration statements?

MS. STEINGART: The plan investors have a separate registration statement, Your Honor.

THE COURT: Well --

MR. BUTLER: Your Honor, there's a resale registration statement that they have -- that eventually -- that will have to go on in order for them to resale their security --

MS. STEINGART: Right.

THE COURT: But under 1144 they're underwriters. And you're going to have the registration statement coming -- I mean, you'd have to do it at confirmation. So I don't see why there wouldn't be just one registration statement which would cover both. And again, I mean, I raised this during argument. And I do want to hear the parties on this. There is this pro -- it's an unusual provision given the other provisions of the agreement, that talk about sole discretion and the like, but

6(d) of the investment agreement, again, says each investor shall use its reasonable best efforts to take all actions and do all things reasonably necessary, proper or advisable on its part under this agreement and applicable laws to cooperate with the company and to consummate and make effective the transactions contemplated, not only by this agreement (which has its various walk rights) and the PSA (which has its various walk rights), but also the GM settlement and the plan. The plan is a plan that -- I mean, you're going to negotiate a plan that has a registration rights feature to it. They've committed not to confirm the plan, seek confirmation of the plan until they have the registration rights complete. I don't see how this imposes some -- some duty -- I mean, this -- this appears to me to impose a duty to use reasonable best efforts, more than sort of a general good faith duty that people arguably have whenever they're dealing with each other, but a reasonable best efforts duty to cause the effectiveness of the plan.

MS. STEINGART: Well, Your Honor, several -- several points. First is, the equity committee is not a party to any of these agreements, that's number one.

THE COURT: I don't -- okay.

MS. STEINGART: And that matters. And that matters. Because conditions and other things can be adjusted and waived as suits the parties to those agreements at the proper time.

Secondly --

THE COURT: Well, but you're saying parties, plural which includes the debtor as a fiduciary, so --

MS. STEINGART: I do -- I do include the debtors. But the debtors have shown -- the debtors have shown that every time the plan investors say I want the stock at thirty-five, I want to make the rights offering through confirmation. I want to --

THE COURT: Well, let's go to the next point because you have 363 in any event.

MS. STEINGART: Let me just say this. Lastly, Your Honor, you know the plan investors have duties too. The plan investors have investors. And as we get to the point where the plan and disclosure statement have been put together, and Your Honor, they're not put together yet. And as the plan investors may believe that somehow that their recovery will be diminished they can begin to pressure for these kinds of changes to protect the constituencies they must protect.

THE COURT: But aren't they under a reasonable best efforts obligation under this provision. I mean, they can't just jerk the company around at that point, can they?

MS. STEINGART: They -- they will do whatever it is necessary for them to do to protect their constituencies. They're not going to be sitting here and wondering about --

THE COURT: That's fine. Companies do whatever is

necessary all the time, but it's subject to their contractual obligations.

MS. STEINGART: This is not a contractual obligation that means that they cannot seek waiver because the agreement contemplates waiver. If there was not a waiver provision, if they introduced it at the eleventh hour --

THE COURT: No, I agree. There's definitely a waiver provision, but it just seems to me it's - it's limited not only, sort of, by the general good faith obligations that people have to the extent they have them, but by this provision. So I -- I just -- that one I didn't -- I mean, I -- I -- the whole purpose of this -- of this document, as far as the equity is concerned, is to enable the registration rights. I understand why it's important to the equity, but I also understand that there's a reason to have general waiver rights in documents. There are things that can come up. The SEC may, although it's hard for me to imagine why, given the importance of this matter and given the company's cooperation with the SEC as evidenced by the agreement the company entered into, that the SEC would put obstacles in the way of a registration rights agreement, but conceivably that would happen and you might have to take some other route to get people the value that they're entitled to. But it's a -- other than that, I don't think it could be used as a mechanism to jerk the company around. I just don't see that as a legitimate tactic.

MS. STEINGART: Well, Your Honor, to the extent that you read the agreements that way, we are certainly want to have this kind of value brought to -- home to our equity holders and to the extent situations arise that mean we have to try to work with the company and the plan investors to deliver it in some other way, we're certainly open to do that. We just want to make sure that it doesn't go away. That's our concern.

And to the extent that the Court believes that it won't go away, we will -- you know, certainly will accept that. But --

THE COURT: Well, I don't believe it will go away for a bad reason. Let's put it that way.

MS. STEINGART: It's an option and I guess, to the extent that the Court's not inclined to do anything about it, then we'll see what develops and deal with those issues when they arise. But there are still important other issues that exist here. And I think that we can begin to talk about it by looking at Mr. Sheehan.

Mr. Sheehan testified that, in a sense, the alternate transaction fee and commitment fees here represent double dipping. He said, in his view, that the alternative transaction fee was not put in place to get this bidder to come in and act as a stocking horse. That was in his testimony. He testified that the other amounts or the other purposes of this was to compensate the investors for the use of their money and

their expenses. But we certainly have commitment fees that are doing that and expense of reimbursements that are doing that.

He said he really didn't anticipate the cumulative effect of the plan support agreement and the EPCA in --

THE COURT: Could I stop you, though, on the prior point?

MS. STEINGART: Yes.

THE COURT: You said earlier that there's a sixty-day, perhaps even ninety-day window for other transactions, so lets see who comes to the table. But isn't -- isn't the risk that if I go that route as the equity committee wants it, which is not to approve this motion, that the table will be empty? There's no one sitting there. If I don't approve this motion isn't it really a game of chicken with Appaloosa and Cerberus and the other investors as to whether they leave the table? And -- and -- so isn't that the real rationale for these various fees? Certainly the alternative transaction fee?

MS. STEINGART: Well, the alternative transaction fee only matters if someone else can be at the table. And --

THE COURT: Well, no. But -- but -- is the point you're making that all that the investors have is an option or is it that they'll be there anyway? Because I don't have any assurance that they will be there at this level. And I appreciate that you say this level isn't sufficient. But this level has created a fairly high class problem for the

shareholders, who, before this transaction was announced, you know, were maybe gasping up in fairly thin air.

MS. STEINGART: Well, I think that -- that part and parcel of this transaction being put together, Your Honor, were representations that there really would be a market test here. So -- so that's -- that's part -- that was part of these framework meetings, hours and hours together and we'll get to that.

THE COURT: But see -- I -- I -- but, but --

MS. STEINGART: The courts have --

THE COURT: Now let me -- let me -- because I want to -- when you say there would be a market test, you can have a market test with a stalking horse. In fact that's generally how it's done. So I guess I don't -- I understand your argument that -- and it was certainly a powerful argument the way the document first read, that it wasn't a real stalking horse. But at the same time, what is precluding the market test now, other than the position the company is in separate and apart from, you know, as a matter of its business?

MS. STEINGART: Well, there are several things that are -- that are precluding that from occurring, Your Honor. I think that -- that it makes it very difficult for people to approach the company and to deal with the complexity of the issues here without there being some limited process for that to occur. Everyone keeps talking about how this is the

biggest, the most complex, the most difficult, that, you know, GM has to find bidders acceptable. Unions have to find bidders acceptable. And I can -- I can understand all of that. And to the extent that that is the case and you want to award someone this kind of a package, okay, because the thing that necessitates the market test is not only the fee, Your Honor. It's the package, okay. And if you're going to award that kind of a package to someone for being at the table, then I think that you have to put yourself in the position to satisfy yourself that it's the only deal available. And unless there is some way that people can get into the process and people can have a pathway, the company should be facilitated, not just minimally causing conversations with GM and at the appropriate time the union, for those who come forward who are properly screened and who the debtor determines can or should engage in these discussions. Its not a free for all, but the package is one that would justify it. And you say, well, you know, they've given me, you know, they've given me, like, the company a take it or leave it package. And they've tweaked it here and they've tweaked it there. And if I -- you know, and somehow they're going to walk away. The courts have often, Your Honor, said look, this is good but you need to change your process this way for me to approve it. You know, Mr. Butler said you were the thirteenth director. For you, the thirteenth director in a different situation. You're the thirteenth director who

has now been fully informed because Mr. Miller said he never saw the 500 million dollar --

THE COURT: No, but I -- I -- I don't understand. It's kind of loose -- loose terminology here. What do you mean by “process and package”? I'm just not --

MS. STEINGART: Well, I think that that can very easily -- you know, we have sophisticated financial advisors and lawyers who can say that during a forty-five day window this is the screening procedure. This is what you need to be a qualified bidder. This is who it goes to.

THE COURT: But you know, when you -- I mean, I drafted the Southern District Rules on selling assets, all right. When you go to the prescreening procedures, do you know what it says? You pre-qualify in terms “satisfactory to show that you have the financial wherewithal to consummate the transaction.” And here --

MS. STEINGART: Right.

THE COURT: -- you have -- beyond that point, which is ultimately the same thing that anyone will do here anyway, is try to show Rothschild and the company that they have the financial wherewithal, I mean, that's not really a “procedure;” everyone knows that. And then the other -- the other point is, you know, fairly unusual here, which is that -- and it's a point that anyone who's looking to buy into this company knows or has to know, if they do just minimal due diligence, is that

they have to be able to relate to the unions and their key customers. So I -- I don't' think it's a particular mystery. It wasn't a mystery to Mr. Daugherty. On November 1st he knew something was up and he called Mr. Tepper and said, "I want to be involved." And I'm assuming, given all the money awash in the hedge fund distress fund world, that, you know, there were probably a lot of other people between then and December 18th that also had the same idea, and certainly since then. It's not really a mystery is it?

MS. STEINGART: Your Honor, I don't think that it's a mystery but I do think that given the posture of GM in issuing statements and sending communications that it's not a loss to anybody.

THE COURT: But GM, I -- well actually --

MS. STEINGART: I understand --

THE COURT: Well, actually, that's -- I wanted to raise that point.

MS. STEINGART: Uh-huh.

THE COURT: It's a question I had for the debtor. GM is obviously a third party. It can agree not to talk to someone or to talk to someone.

MS. STEINGART: Exactly.

THE COURT: There is relief sought, in the form of order submitted, that I want to make sure I understand. Which is -- it appears in both the findings as well as the -- the --

one of the decretal paragraphs. It's in both paragraph O of the findings but I'll read from the decretal paragraph, paragraph 4. It says, “The entry into the plan framework support agreement by the parties thereto and the performance and fulfillment of their obligations there under does not violate any law, including the Bankruptcy Code, and may not give rise to any claim or remedy against any of the parties thereto, including without limitation the designation of the vote of GM or any plan investor or any affiliate of any plan investor under section 1125(e) of the Bankruptcy Code, on account of entering into the PSA and performing there -- and fulfilling their obligations thereunder.”

And then there's a following statement - a statement that says, “notwithstanding anything contained herein, except with respect to those types of claims, all other rights and claims are fully preserved.”

And so my -- my question is, the way I read this, I don't see anything wrong or improper, you could -- could persuade me otherwise, I guess, in GM simply entering into an agreement that says it will talk to third parties only under certain conditions. Those being a fiduciary condition as well as the condition that Mr. Butler alluded to, which is the debtor can -- in conjunction with the debtor's discussions with third parties.

How -- however, a creditor like GM might then

subsequently engage or use its -- use its discussions, it seems to me, could conceivably, under certain circumstances, which I trust GM wouldn't do, but conceivably as part of that process, could engage in behavior that might lead to the designation of its vote. You know, it could say I will only talk to you if you agree to, you know, pay us a fee or something like that. Or, you know, we'll only talk if you agree that we get the following distribution under a plan or something like that. I trust that this -- this language doesn't protect GM or the other parties other than from the literal wording of the language which says that it agrees not to talk unless these conditions are met. Is that right?

MR. BUTLER: Your Honor, from the debtor's perspective that's correct. And General Motors is here and they can -- they can respond to it. Paragraph 4 of the proposed order in the 1125(e) writes there, simply there was a great concern that -- being very clear here, that having GM sign a piece of paper saying it supported this approach was not going to then give someone who didn't like GM down the line, the opportunity to sort of say, okay, now you can't vote in the plan. And that was the issue. Because it wasn't -- them entering into the plan was not supposed to give other parties leverage in this case.

THE COURT: All right.

MR. BUTLER: That is why this was written.

THE COURT: All right. Well, at the same time I didn't want to protect any party. I mean, you conceivably -- other -- you know, other parties to these agreements could do things in connection with negotiating the plan or the GM settlement that might give rise to a designation of vote. And I -- I read it as not protecting them under those circumstances.

But why isn't -- why isn't GM's agreement -- why isn't GM free to agree not to talk to anyone in return for getting the agreement with Appaloosa and Cerberus?

MS. STEINGART: Because, in restricting GM it means that -- in having an agreement that's Court approved restricting GM as opposed to GM conducting its own volitional conduct in terms of talking or not talking, it puts the Court in crematoria on a restriction of people being able to come into this process.

THE COURT: But doesn't it -- doesn't it just say something that I wouldn't have power over anyway?

MS. STEINGART: Yes, but to the extent that someone is asking you to approve this behavior, you shouldn't. GM --

THE COURT: Well, that's why I just went through the earlier language. Because if it -- if they're asking me to approve behavior that would violate the Bankruptcy Code, I have a problem with that. But it doesn't sound to me that that's what's being done.

MS. STEINGART: But Your Honor, you know -- you do know as well as I do, that when -- that first of all, that's very hard to identify and prosecute. And secondly -- secondly, there would be such an aura of uncertainty around behavior that one would be uncomfortable -- that why would you want to create an environment for that to occur. Why -- why shouldn't GM have to -- why should GM have -- have this chill or umbrella to hind behind when it behaves in certain ways in connection with the conduct of these negotiations going forward. The agreement --

THE COURT: But even if -- even if --

MS. STEINGART: -- Your Honor, is the most illusory. It can want -- first of all, it's not a party to the EPCA.

THE COURT: But let me -- let me just interrupt you for a second. To the extent it is a chill they have it anyway. They don't need. Why wouldn't they?

MS. STEINGART: Your Honor -- I disagree Your Honor, they have it differently. They have it differently. To the extent that this Court approves the agreement, then there is a wider range -- then there is a wider swamp of conduct that they can attribute to a court approved agreement to not making themselves available, to not having meaningful conversations. All of this -- all of the -- what it does is, it makes the plan investors lock -- it sort of is an exponential increase in the alternate transaction fee but not monetarily. Not monetarily. Because it's a restriction on conversations that would help if

a bidder is serious and meaningful that would help that transaction along. Its one thing for the investors to get a no shot from the company in a limited way and that would result in an alternate transaction fee. Its another thing for a layer to be on top of that that would embolden GM to create more of a -- more of a protected court-approved behaviors that --

THE COURT: But in the end only --

MS. STEINGART: -- to take that out of the process --

THE COURT: But I'm sorry. The only --

MS. STEINGART: -- that could lead to another --

THE COURT: The only behavior is one that's arguably more limited as far as -- in that it restricts GM's rights than it would have normally without an order, i.e., they could always say I'm not talking to anyone. That's one of the -- you know, that's one of the basic -- that's a basic right. "I don't want to talk to you."

MS. STEINGART: Well, Your Honor, right. And that's a right that they can exercise. But Your Honor, the only reason this is in here is so that GM can protect the favored bidder. And I think that that's a reason why the Court should not approve it.

And secondly, while we talk about agreements being illusory, who in this process is at more illusory with respect to, then GM. Their April 1st walk away has not been changed. Their ability to not make labor agreements or other agreements

for no reason or any reason has not been changed.

THE COURT: But what are they getting?

MS. STEINGART: Why do they care? They care for two reasons.

THE COURT: No, no. What is -- what is the debtor giving them?

MS. STEINGART: The debtor -- the debtor is giving them, in a sense, and they are getting a situation where they can obstruct more effectively the debtor's discussions with third parties. And it's not that the debtor is getting it --

THE COURT: Well, what right does -- what right does GM have to -- under these agreements, to preclude the debtor talking to anybody?

MS. STEINGART: The problem is that --

THE COURT: In fact, hasn't GM agreed that -- implicitly that if the debtor brings someone to them they'll -- they'll listen and talk?

MS. STEINGART: Why should there have to be a process to bring someone to them? Why shouldn't they just be available for anyone to contact? Why shouldn't that exist? And then they can say, we don't want to talk to you. The debtor's can find someone that they feel is worthwhile and say, GM, we'd really like you to talk to them. That's not changed one way or the other. But why shouldn't somebody be able to go to GM? Why shouldn't GM be able to talk to them? What possible

benefit can anyone --

THE COURT: But that's a --

MS. STEINGART: -- but the plan investors is that --

THE COURT: Again I -- I guess I don't see what the debtors -- couldn't -- couldn't GM and the --

MS. STEINGART: It chills the debtor's ability to get their bid.

THE COURT: -- and the plan investors -- no, but couldn't GM and the investors have separately agreed anyway?

MS. STEINGART: But they didn't. Your Honor, but they didn't.

MR. BUTLER: We are -- actually, they did. And that's the whole point of the lockup. That was the whole point of the fiduciary out provision, because the debtor said we won't sign this agreement and we won't bring it to court unless the debtors have the right to bring you people, who we're talking to in the performance of our fiduciary duties.

THE COURT: So in essence -- doesn't this limit GM's rights as opposed to give them more power?

MS. STEINGART: Well, Your Honor, the response to that is, all the more need for a process. If the plan investors and GM want to make agreements that chill the ability of serious people to go and talk to GM directly, so much more the Court should see the need for more than the debtors exercising some minimal fiduciary duty, reception to people who

may come and knock on their door. All of these things, Your Honor, are of a piece. And each one -- each one operates --

THE COURT: Well, let me -- is there any -- is there any restriction under this motion or anything else out in the case precluding any party from knocking on Fried Frank's door, Houlihan Lokey's door, the chairman of the equity committee's door and saying “the debtor's not listening to me”? I mean, aren't there layers on layers of fiduciary duties here that protect a sale -- a bonafide person that wants to buy from --

MS. STEINGART: None of the -- Your Honor, not if the process is chilled, no. No, it doesn't. And I think that the combination of events here and if I could just proceed to talk about it slightly?

THE COURT: Okay.

MS. STEINGART: I think that you can appreciate that the process is chilled. And I think that you can appreciate, in other settings such as this, this court and others have encouraged minimal changes to these kinds of agreements.

THE COURT: But I -- I still don't -- but what are they?

MS. STEINGART: The message is sent --

THE COURT: I still don't -- I still haven't heard what they are, the minimal changes that you're talking about. I don't -- I don't --

MS. STEINGART: All right. Well, a minimal change --

would you?

MR. SCHELER: Your Honor -- Your Honor, Brad Scheler.

THE COURT: You ought to come near a microphone because that's what gets picked up on the transcript. But you better put your blackberry off because that will make the microphone make strange noises.

MR. SCHELER: Your Honor, just a couple of things. First I want to go back a little bit to the point that you had about the rights offering.

THE COURT: No, I don't want to have two arguers. I just want to hear the “minimal changes.”

MR. SCHELER: It's all related. It's all related. Changes that we need are the rights offering, okay?

THE COURT: No, no. That's not -- I'm talking -- this is a very limited point, which is the “process” -- Ms. Steingart is --

MR. SCHELER: Your Honor -- Your Honor, basically the “process” is as follows. Okay. There is a major undertaking that has to be done between GM and the unions and Delphi. And we support that effort and support that endeavor. Cerberaloosa has wisely said, what we want is we want to be a part and parcel of that deal and they are a part and parcel of that deal. But it has also been said on the record, okay, publicly is that GM has a -- currently has a preference. Now I can't,

in any way shape or form, read into the mind of GM and I don't think today's hearing should or needs to be about GM. But what we want is, we want during the next sixty day period for the debtors to be directed by this Court, because they're awarding this huge fee, to encourage, cajole, the debtors and unions to talk to any qualified bidder. Okay. Not just to Cerebaloosa. This is not a done deal. Now you can't put a gun to GM's head, as you say, and do this. But if in fact what's happening here is that GM has decided, in their own discretion, that the only deal they want is the Cerebaloosa deal, then you've given them -- you've given to Cerebaloosa ironclad protection and we're on a fool's errand to think there's going to be competitive bidding. So the burden that we want, is we want the debtors to be directed by this Court that if you're giving a third party, Cerebaloosa, huge breakup fee protection, use the next sixty day and if you have a problem getting General Motors, the unions or anybody else to entertain higher and better offers, come back to this Court and explain to my why that is. Now, it may be that GM says, we just don't like those guys, and that's their entitlement. But then the tension is, is the allocation of value between General Motors and the equity holders. We're very clear about this, Your Honor. General Motors can have whoever it wants as the successful bidder here provided that the equity holders get the value they're entitled to. Right now, what you have is the potential

circumstance where Cerebeloosa gets paid a lot of dough and the company believes that its gone as far as it needs to go unless -- unless it decides it can get General Motors and the unions to do a little bit more than they've done to date. Right now this circumstance presents itself to us as though we're done. And unfortunately, the parties with an economic stake in the upside of this aren't done and the only way for us to be done is if the company treats third parties in a more embracing way. And not just in a show way. Your Honor --

THE COURT: All right. No I -- okay.

MR. SCHELER: Okay?

THE COURT: Yeah, I heard you.

MR. SCHELER: Thank you.

MS. STEINGART: If, just to proceed a little bit, Your Honor, because the provisions here that -- that the Court is approving are provisions that were not considered by the Board in a fully informed way. They didn't understand the operation of the two agreements. Both Mr. Sheehan and Mr. Miller testified about that. They did not receive information that showed how the two agreements operated in tandem and how each one operated to enhance the detriments of the other to the debtor.

Let's -- you know, what we heard from Mr. Resnick. We heard from Mr. Resnick that he never provided the Board with a synthesis of the fee and value transfer provisions of the

EPCA. He never fully apprised the Board of the inherent value of the convertible preferred to AHC. What he did was tell the Board that the seventy-six million in fees were market. And that this was the only advice he gave to the Board on the package of fees and discounts that AHC was receiving. And that he didn't give the Board any analysis of the terms and structure. What else did Mr. Resnick do? Mr. Resnick had Rothschild compile the chart that is JT Exhibit 96. And this chart is a chart of convertible preferred stock provisions call comparison. He said it showed him what he already knew. And what it showed him is that convertible prefers, in public companies such as Delphi, are never sold at a discount. Are always sold at a premium. He knew this already. But he didn't tell Mr. Sheehan that. And he didn't tell the Board that. But if you look at this chart, Your Honor, what he did with it, was he sent it to the plan investors. And he sent it to the plan investors in November.

What else did Mr. Resnick do? He said that the backup, to his opinion, that the seventy-six million, without taking account of the -- any other fees, was plan value which he charts. And one of the charts, which is JT Exhibit 66, plan of reorganization rights offerings, has a chart of fifteen to eighteen companies. And he argues that the fees are market but he doesn't tell the Board that only one company on that list also got discounted stock in addition to the fee for acting as

the backstop.

Your Honor, what he failed to tell the Board, when the Board approved this agreement, was one of the most -- also one of the most important points. He never advised the Board on the basic value of the option, that the company was giving to AHC to have the right to walk away from this agreement the day before the effective date.

I know, Your Honor, it's been changed. But the issue is, what was the Board -- what was the Board told and what did the Board understand? Our position is not that the Board did not try. It's not that the Board did not work hard. We agree that the Board did. But it did not have the kind of information that one would have hoped and expected, given the advisors it had, that it could -- that it should have. Here Mr. Resnick testified that he told them it was market. At the same time, in a separate document, and we've seen these. We've gone through these documents. At the same time, in a separate document, in the smallest print possible, there's information about how this 400 million dollars in fees in addition to the seventy-six. So the seventy-six million is in big print and the 400 million is, like, tiny.

Okay. He further testified, Your Honor, when asked why didn't you put it in one document was that it was his professional judgment. This is his professional judgment and operation to advise the Board in this manner. Okay. So much

for professional judgment.

THE COURT: Well, it's not a fee.

MS. STEINGART: It's a transfer of value --

THE COURT: I'm not approving -- I'm not approving -- I'm not approving the preferred stock today. That -- that's contingent on there being a plan. And even then its not a fee. It's --

MS. STEINGART: Well, the plan that's proposed will have this attribute, Your Honor.

THE COURT: I mean, I think you -- I mean, the way I view your argument is, that in essence the -- well, it's a little incorrect to refer to this as a stalking horse transaction because it's a -- it's not your typical sale transaction. But your argument is that we should -- we should start all over again because this one isn't good enough.

MS. STEINGART: No, my argument is not that I should start all over again, Your Honor. My argument is that the confluence of these attributes of the agreement make the entire situation where this company is not testing the market unacceptable.

THE COURT: Well, that's what -

MS. STEINGART: And I --

THE COURT: But I guess that's what you're saying, is that this isn't -- this isn't a good initial test. Or this isn't a good basis to move forward on because the price is too

low. Because again, I'm not approving this discount, as you characterize it, today. It's not -- it's not one of the fees under the investment agreement.

MS. STEINGART: But Your Honor, you heard the testimony here. You heard the testimony time and time again about how time is running out, the situation is complex. It's really hard to talk to other people. You can change that. That's the aspect of this agreement that makes all other aspects more egregious. Okay. It was -- Mr. Miller sat here and when he looked at that chart he said he had no idea about that. He had no idea about that 500 million dollars was involved -- was involved in the combination of discounts and fees.

THE COURT: Well, no. But he had the equity's -- the Board considered the equity's itemization of the -- the problems with the motion.

MS. STEINGART: He testified -- Your Honor, he did testify in words that he didn't realize that those amounts were implicated in plan value. If you looked at those numbers in plan value with the stock. He said that, Your Honor.

THE COURT: For December 11th?

MS. STEINGART: He sat -- as he sat here yesterday, he said that.

THE COURT: But it -- he also testified that in connection with the Board meeting on the 9th and the 10th, they

literally went through Houlihan Lokey's points item by item.

MS. STEINGART: They did.

THE COURT: That included this point.

MS. STEINGART: They went through Houlihan Lokey's points but they're here -- but they -- where were they were. Did you want them to withdraw from the agreement?

THE COURT: That was under consider --

MS. STEINGART: That's not -- that's not --

THE COURT: -- that was under consideration.

MS. STEINGART: That was under consideration, Your Honor. And I don't think that the company felt that that would be the wisest thing to do, nor do I.

THE COURT: But then --

MS. STEINGART: Unless -- unless these agreements --

THE COURT: But then wait a minute. What are we talking about then?

MS. STEINGART: Your Honor, if what we're talking about here is whether there are certain provisions of the agreement that are unacceptable. And to the extent --

THE COURT: No, I understand. You --

MS. STEINGART: -- that the Court communicates that and, you know, first of all --

THE COURT: Well, all right. But that's a little different. That's basically -- you've been saying you don't like the -- these two agreements because they're too much like

an option. But in essence, aren't you saying you want to flip it over and give the estate the option in -- you know, that's basically --

MS. STEINGART: The estate's paying for the option, Your Honor.

THE COURT: No, no, no. I'm saying, you want to flip it and say the estate can have, you know, the parts that you like and cut out the more egregious parts that you don't like. And there's some merit to that. I understand that issue. But isn't that all we're talking about?

MS. STEINGART: I don't think so, Your Honor. Because I think that without the estate being in a position to have the option period, because -- what Mr. Resnick told you when he said that there's a sixty-day window is that this is the option period that is the payment that is the quid pro quo for the alternate transaction fee. And unless -- and unless there's a better way for people to get to this company, and GM is not locked up in more ways than just its attitudinal preference, that the period will be valueless. Mr. Miller sat there and said, the time is running out. So if the time is running out and if there's no opportunity to shop this company, yes, the Court should not approve this agreement. If there is, and there are ways to make it structured so that the estate is not harmed, because the estate is harmed by the value transfer. And certainly, you know, I think with a prospect of bringing

other meaningful people in that the estate is not going to be in a position where it can't move forward.

Getting back to Mr. Resnick. There was a certain point in time where, I think it was important for him, like all professionals, to give his client bad news. Whether his client asked for it or not. His job was to say, I've looked at this and they're getting 500 million. His job was to say, I've looked at this and they have an option to walk away instead of hiding the ball in separate documents and small print. And I think that's what you had happening here.

Mr. Sheehan testified that he didn't realize what the optionality was in the agreements. He had advisors who should have told him. We don't, in any way shape or form, question the good intentions, the tireless efforts of Board and management at Delphi, Your Honor. But they did not receive an understanding of these agreements when they approved them. And that matters. That matters very much. It's not a hollow responsibility and it's not something that there should be precedent in this court or any other court, that agreements that are considered that have these kinds of things that people who are negotiating them and approving them admit they don't know about, can be sustained. That's not what integrated resources says, Your Honor.

Mr. Miller said he tried very hard to understand the agreements and we agree. But he also admitted that in

narrowing the process to just AHC as a bidder, and it wasn't a really big narrowing because there are only three to begin with. There was -- from the time they entered bankruptcy, the only three companies that this debtor ever talked to were Cerberus, Ripple Wood and Appaloosa. Mr. Resnick said as much. So they narrowed the three to one. And the Board narrowed the three to one because during these framework discussions, that Mr. Butler is so enamored of talking to us about, the committees were told that that process would lead to a stocking horse bid. And Mr. Miller acknowledged that when he was on the stand.

So the Board put itself in a position with AHC --

THE COURT: I'm not -- I'm not so sure he said it the way you said it.

MS. STEINGART: I thought he acknowledged it. Okay. But the Court certainly has its views and this is --

THE COURT: I'm assuming you were there, though. So in this sense I'm --

MS. STEINGART: I was.

THE COURT: -- I'm letting you testify, in a sense.

MS. STEINGART: But wasn't --

THE COURT: But a lot is in the mind of the beholder of what a “market test” is, obviously.

MS. STEINGART: It does. It does. But when AHC narrowed it to one bidder, Your Honor -- when it narrowed it to

one bidder, they compromised their negotiating position to the extent that both Mr. Miller and Mr. Sheehan testified time and time again that every disagreement on their part, with the plan investors, became a take it or leave it situation as to discounted stock, as to timing of rights offering, as to optionality. Every time there was a pushback, the plan investors would say take it or leave it and the company was there.

THE COURT: But if you look at the exhibits that talk, that the Board had about resolution of open points, I mean, it shows that -- that there were agreements by the investors where they backed off of their original positions. Now some of them may have been overreaching original positions, but in my view not all of them. I mean, it doesn't seem to me it was just that they had them completely over a barrel.

MS. STEINGART: Well, just about, Your Honor. Because on any matter of any substance or value that was -- there was a one-way street there. In essence, Mr. Miller testified that he now finds himself in a situation where GM and the plan investors are making it impossible, for whatever small window Mr. Resnick testified and Mr. Miller agrees exists for that market test to take place. What was the equity committee doing in all this? Because Mr. Butler has been -- has been fond of saying, from time to time during this case, well the equity committee was there, they knew what the fees were, they

knew what this was, they knew what that was. We wanted to cooperate. We wanted to help facilitate the debtor making a deal that would enable this transformation. Because we too want the debtor to succeed. And we, joined with the creditors committee in helping the AHC proposal emerge because we thought it would be a stocking horse, because we thought that we would have the ability to work with debtors to use such a process to maximize value. Because a rights offering was proposed for our share -- for shareholders -- public shareholders of Delphi that gave them the full value of the discount. And a process for exercising those rights that were meaningful. And meaningful for unsophisticated investors.

Instead, what the equity committee got was, we're working very hard. It's too late. GM won't talk to anybody. It's very hard for us to make a process to invite bidders in because they should be inviting people in. Giving this package away, they shouldn't just be sitting back. There should be four or five or six serious contenders for this -- for this estate, that are identified and that are approached and whose review of the transaction is facilitated.

Instead of a rights offering that gives public shareholders the full value of that ten dollar discount, we have a rights offering that makes it complicated for the moms and pops to really understand and exercise those rights based on the insistence of the plan investors for even more value.

They insisted on having the rights offering in a way that diminished the ten dollar value that the shareholders who had paltry amounts of shares would have so that they would have fewer fees to pay. It was economically profitable to them to do that. That was what Mr. Sheehan testified. The company didn't want these things to happen. Mr. Miller wanted the process to proceed so that there was a meaningful market test. But something went terribly wrong. And the only one, the thirteenth director that Mr. Butler referred to is the only one who can correct it.

The only rationale for leaving this agreement in place is to have a process where they do have to go out and find people. Not an open option, but a process that invites the people who have the capacity in and lets them have a look. Without that, these agreements should not be approved.

And I can talk about the legal basis for that, but Your Honor has my briefs. Thank you very much.

THE COURT: Okay. Thank you.

MS. LEONHARD: Good morning, You Honor.

THE COURT: Good morning.

MS. LEONHARD: Alicia Leonhard for the United States Trustee. I'll be very brief. I have, actually, three points to make.

First, I'll start very specific -- make two specific points. The debtors -- neither the debtors nor the investors

made any salient response to the U.S. Trustee's objection regarding fee applications under Section 503(b). They simply reiterated their argument that it was their business judgment and they could pay the fees under the Business Judgment Rule. However, I don't think that the Business Judgment Rule trumps the requirement to file fee applications under 503(b). And but for this -- this motion and these agreements, none of those people except perhaps Appaloosa, would be entitled to fees. And Appaloosa certainly would be in here seeking fees under 503(b) by application.

THE COURT: Well -- can -- let's go through that.

MS. LEONHARD: Yes.

THE COURT: It's the case - isn't it -- under numerous instances where an estate will pay fees of a DIP lender and its counsel or someone who is doing due diligence to provide exit financing without a full 503(b) application? I agree with you that it is also the case, normally, since those fees are always at least limited by a standard of reasonableness and also contractually tied to a particular activity that there's a process in place for the Court to resolve any disputes about those issues. And normally, in addition to the debtor getting the bills, the U.S. Trustee will and/or, you know, a committee will.

MS. LEONHARD: Certainly.

THE COURT: But I -- and that's not the case here

either, and I want to address that. But I don't -- I guess as far as a fee structure is concerned, in connection with a transaction, it's certainly not my experience to say that a 503(b) application is required. I want to bifurcate this as between the fees in connection with the transaction and going forward if approved and the specific Appaloosa fees, because that's a separate issue that you've raised. But just on the first point it seems to me that, as long as a debtor can show, under 503(b)(i), that these are actual and necessary and beneficial, that you don't -- you don't get into (b)(iii) and (b)(iv).

MS. LEONHARD: That's correct, Your Honor. You don't -- in that circumstance you don't get into (b) -- you don't get into the substantial contribution issue.

THE COURT: Right.

MS. LEONHARD: Absolutely. However, there is, you know, that the -- the reason, I think, that the DIP lender situation is distinguishable is that there is an underlying contractual obligation for the DIP lender. And also for pre-petition lenders and also for indentured trustees, there's an underlying contractual obligation that exists -- very often existed pre-petition.

THE COURT: But again, I -- there -- there are at least two other scenarios I can think of where this is done fairly routinely. One is in connection with a stalking horse

transaction where one element of the upset fee or the break fee is payment of the fees, reasonable fees, in connection with the transaction. That's different from the O'Brien Energy case where there was no agreement.

MS. LEONHARD: Uh-huh.

THE COURT: Where the court was looking at it, in essence, as a substantial contribution.

MS. LEONHARD: Uh-huh. Uh-huh.

THE COURT: And then there are the cases where, as just happened in this -- in this case, the debtor either does a refinancing during the case or is looking for exit financing.

MS. LEONHARD: Uh-huh.

THE COURT: And agrees -- on notice of course, agrees to pay the fees of the party providing the refinancing or the exit. I mean, the people who provided the fee -- who did the refinancing recently, they -- they had fees paid.

MS. LEONHARD: Your Honor, I would agree. The U.S. Trustee would agree that if there's an underlying contract the fees would be payable. You know, I -- I suppose, I mean, can one look at this and say this is an underlying contract, I don't know. But that is the reason, if there's no underlying contract. But I also think that based on this agreement, which is very lopsided, the balance of power is, sort of, in the investor's side. I think that the parties in interest in this case have a right to see the fees and also see whether they're

reasonable.

THE COURT: Well, I -- on that point it did seem to me that the U.S. Trustee should be entitled to get the fees -- the bills. The same type of mechanism that the creditors committee has in the order without -- you know, without going further than that. And so that they would have the opportunity to -- the U.S. Trustee would have the opportunity to review them. You're on the fee committee anyway?

MS. LEONHARD: Yes, Your Honor.

THE COURT: I think there is an issue as to widening it because it strikes me that, conceivably, there will be issues down the road where people will be showing legal bills and other statements to parties who may be in litigation against them. The U.S. Trustee's not really going to be in that position. I believe that there is a problem with this agreement unless there is that type of mechanism, in addition to the committee, which I see you've already put into the order.

MS. LEONHARD: Okay well, that's fine, Your Honor. But I think there is -- I think Appaloosa presents a different issue.

THE COURT: This is the five million?

MS. LEONHARD: That's correct. And I do believe that the debtor's have -- in some sense are -- the parties have, in some sense, acknowledged that by not making the payment until a

plan is confirmed. Appaloosa clearly, in the beginning, was a very active in the case as the Court remembers. They were here every day from the very beginning. And they actually filed the motion to -- for appointment of the equity committee, and is seeking, I'm sure, the only basis on which the Court could approve fees would be under the substantial contribution provision at 503(b)IV. And I think it's the only way that Appaloosa -- I think Appaloosa must file a fee application under 503(b) to get those fees.

And I would request that the Court modify -- if the Court does approve the order, to modify the -- approve the agreements to modify the agreement to require Appaloosa to file a fee application.

THE COURT: All right.

MS. LEONHARD: The second argument I'd like to make is with respect to the plan framework agreement. The issue the U.S. Trustee has with the plan framework agreement is that it -- it specifies, almost many of the terms of the plan, which appear to be written in stone. And the Court -- and the party -- and the debtor says, well, we're not here to confirm the plan. And of course I understand that. But our concern is that they're -- the parties are asking the Court to approve terms of the plan.

Now, when we come to plan confirmation, these terms will be in the plan and are the parties going to come back --

and some of these actually appear to violate 1129. For example, I noticed that GM is treated differently then the other unsecured creditors. Are they going to come back and say, but Your Honor, these terms were approved already?

THE COURT: No, they -- they can't. It's like -- it's like, again, it seems to me, at least, when a debtor comes to the Court and says I would like you to approve a breakup fee and expense reimbursement in connection with a particular transaction. The only thing that's before the Court is the expense reimbursement and the breakup fee. The transaction is reviewed to see whether it was reasonable for the debtor to agree to a breakup fee or transaction. But -- I'm sorry, to a breakup fee or an expense reimbursement. And that's, I think, the inquiry I was going through with Mr. Steingart.

MS. LEONHARD: Uh-huh.

THE COURT: But the terms of the deal itself, just as the terms of the plan structure upon which the PSA is premised, are not up for approval at that time.

MS. LEONHARD: Well, I think so long as that's clear. I mean, I think that our view is that this is a term sheet in agreement by the parties. And I -- we're not exactly sure why it really need approval by the Court. Because parties can have this agreement without Court approval.

THE COURT: Well, I think the debtors, out of an excess of caution, are looking for direction. And part of this

is, that it's a public process and the direction is being shown to everyone, including third parties out in the marketplace, such as Highland, that, you know, this is the path we're going down. Not that this is approved now, but this is how we're going to be spending our time over the next, you know, few months, or weeks at least.

MS. LEONHARD: Yes. Okay. Well, actually, Your Honor, you segued me right into my last brief comment. You know, I think we've heard a whole lot, today -- in the past few days, it's been a very interesting trial about uncertainty and how the Court has to approve this agreement today or the debtor will have to start all over. And I have to say that, you know, from the standpoint of this is a public company and a U.S. Trustee, in many ways, is here to protect the public interest. And I'm the only person here, the U.S. Trustee, the only person here without a financial interest, so I have a really pure public interest. And it was interesting, today, that, you know, that Mr. Butler walked in and said, oh, we have a concession from the investors. Wow, they're -- they took away the escape hatch. This is great. But what it showed to the U.S. Trustee was, this is the value of transparency and openness, public disclosure. And those are the core of bankruptcy.

And you look at this agreement and, there is a real imbalance of power. And I understand that debtors never have

much leverage. But many of the terms, and I'm speaking mostly of the rights offering and the governance provisions, are really detrimental to the small shareholders. And we all know that the debtor has 300,000 shareholders. And many of them have one or two shares. Very small shareholders, but they're very loyal to the company. And in fact, the Court ordered the United States Trustee to form the equity committee in recognition of that fact. And so this case, in the truest sense, implicates the public interest. And so that is why the United States Trustee concurs with the equity committee that the Court should either deny approval of these agreements or modify the agreements so that there's a thirty to sixty day window for the debtor to actively seek higher and better offers.

Thank you very much, Your Honor.

THE COURT: Okay. Before you -- before you sit down --

MS. LEONHARD: Yes.

THE COURT: Obviously I'm mindful that there are not just large shareholders here.

MS. LEONHARD: Yes.

THE COURT: And frankly I've had an ongoing concern from the beginning of the case that people who are or might become large shareholders might use the process to take advantage of those who aren't. It seems to me that, whether or

not ultimately the rights offering is structured the way it is in the PSA, that there should be every effort by the debtor and the equity committee to make the rights offering transparent. And I guess, to the extent that the U.S. Trustee could recognize that as well it would be helpful. Obviously resources need to be expended on that process if it's to be done. So that it's not just those who hear through the grapevine or sense the shifting sands, as Mr. Daugherty said, but those who aren't as well tuned in. And I'm not faulting him for that. He has a perfect right to be tuned in. But it seems to me that there is a -- a cost to making a rights offering transparent but it strikes me that the cost is probably well spent here where you have a lot of public shareholders.

MS. LEONHARD: Thank you, Your Honor.

THE COURT: But, the one thing I haven't addressed is the U.S. Trustee's point about the five million dollar fee that is contingent upon confirmation and a distribution to the equity holders. And I think that's largely Appaloosa's issue. Now, I know, because we carried over, the gentlemen from White and Case are maybe traveling now and I apologize to them for that. I see one of their colleagues back here. But are you on the phone still, Mr. Lauria? No. Well, I -- is anyone here for Appaloosa.

UNKOWN ATTORNEY: You know, I'm here but probably

without authority.

THE COURT: Is your client here?

UNKNOWN ATTORNEY: No, they're not.

THE COURT: Well, I could tell you that you can look at this provision two ways, obviously. I'll make their argument for you because I've thought about it. You can look at this two ways. You can say it's really just part of the consideration. That it really isn't a 3.4 billion dollar deal. That's obviously net all of the things that Ms. Steingart has pointed out. And one of the things it's net of is this five million dollar fee. And so you can look at it, leaving aside the other discounts, other fees, this is a 3.3995 deal.

On the other hand, it is structured as a fee, in respect of professionals' fees. And that really does clearly fit within the language of 503(b)(3) or (4). I think that that's probably what Congress had in mind here. Particularly given Congress' concern about professional fees in bankruptcy and the need to have extra review of them. And the fact that this isn't really tied to -- the work done itself isn't tied to this transaction, unlike the other work that we were talking about.

So it seems to me that there's a real serious issue as to whether this should not be subject to the requirements of an application under 503(b)(3) or (4). Having said that, it -- without actually seeing the time entries, but those would be

reviewed for reasonableness in any event -- it strikes me that it is the type of work that would normally be covered by 503(b)(3) and (4). And I think Ms. Leonhard would agree with that.

I could also tell you that just two or three weeks ago I approved a similar application in the Refco case for an ad hoc shareholder committee that basically met the same requirements. What would be excluded would be work done, not in connection with the case, not in connection with seeking an equity committees appointment and doing the due diligence that contributed to the proposal that's in front of the Court now, which I assume and I think Mr. Resnick confirms this, started very early in the case. What would be excluded is matters that really would relate to the types of things that normally wouldn't be covered by a 503(b) application. And those, in this context, would be pretty minor.

So, as in the Refco case there are -- certainly parties in interest can agree not to object to such an application except under limited circumstances, i.e., it was only related to the following work and its capped in a certain amount. But I think it presents an issue as to the -- as to the transaction. On that score, I note that there is a provision of this agreement that says, that it's a condition of the agreement that there be a final order. And I understand why that's in there. And normally it's waived unless there's a

really valid basis for appeal that the parties can judge on their own. But I'm telling you that even if I approve this, and I in all likelihood wouldn't, I think it raises substantial issues on an appeal. So I -- I -- I strongly urge that you two go call the Appaloosa's and see if this would be revised.

MS. LAURIA: Your Honor, can you hear me.

THE COURT: Oh, you're there after all. I thought you weren't there.

MR. LAURIA: Yes, I apologize, Your Honor. We thought we had a live line but we didn't.

THE COURT: Oh, okay.

MR. LAURIA: We got the operator who, I guess, has now put us in.

THE COURT: All right. Just at the -- just at the key moment. Did you hear what I was saying?

MR. LAURIA: I heard about seventy-five percent of it.

THE COURT: Okay.

MR. LAURIA: During the time when the operator was figuring out how to put us in live we were disconnected.

THE COURT: All right. Well, was that the last seventy-five percent?

MR. LAURIA: That was -- it was the first seventy-five percent. I probably missed some --

THE COURT: the last twenty-five percent was

basically that I -- I just have serious problems with this and I think that an appellate court probably would too. And given all the requirements of this transaction, it seems to me that Appaloosa has reasonable comfort that it will get paid all or substantially all of what's covered by this. But I think that the proper procedures ought to be gone through.

MR. LAURIA: All right, Your Honor. We certainly understand the guidance and we'll -- we'll try to get this dealt with appropriately.

THE COURT: Okay.

MR. LAURIA: The thinking on our end was that the benefit provided by the -- to work in connection with the appointment of an equity committee is, at this point, in the case manifest. And we were trying really to streamline --

THE COURT: Well, I think it is manifest but that's -- but that still doesn't get around the requirement of filing an application. I guess that's the distinction I'm making. I think, just like the firm in Refco that got the substantial contribution award, it's likely your firm and the other firms that Appaloosa hired for this period would. But you still have to go through the process.

MR. LAURIA: Understood, Your Honor.

THE COURT: Okay. All right. Thank you.

MS. LEONHARD: Thank you, Your Honor.

MR. BUTLER: Mr. Lauria, can I just ask a qualifying

question, Your Honor?

THE COURT: Mr. Lauria, does understood mean that it's agreed so that if the 503(b)(4) language is put in here, if the Judge chooses to approve the transaction an order can be entered today?

MR. LAURIA: Well what's -- what I mean by understood is, that I understand what the Court has said. And I will recommend it to my client but without getting an official authorization, I can't make the changes. I will certainly, as soon as we get an opportunity, talk to my client. And I -- I am confident that the client will agree to accept the Court's guidance and to make an appropriate change here.

THE COURT: Okay. Thank you. And again, I apologize that your -- that this carried over, but that's the way it goes.

MR. LAURIA: Your Honor, we understand and we're very appreciative that the Court was able to make this accommodation for us to be able to -- to be live by phone.

THE COURT: Okay. All right. So is it Mr. Parkins or your colleague?

MS. STEINGART: Just one minute, Your Honor. One thing that I overlooked to cover and it is quite, quite important to us and I'll be brief. Is the request in the debtor's order for a waiver of the ten day stay.

THE COURT: Oh, we'll deal with that at the end of

the hearing.

MS. STEINGART: Oh, okay. Thank you.

THE COURT: I -- I haven't ruled yet. So I'll deal with that at -- but I understand your point on that.

MS. STEINGART: You do, okay.

MR. PARKINS: Your Honor, my name is Lenard Parkins, Haynes and Boone for Highland Capital. I'll try not to be redundant to what has already been covered --

THE COURT: Okay.

MR. PARKINS: -- with respect to the various points raised. I think where Highland Capital is coming from, having heard the evidence and heard the arguments today, is that Highland believes that the approval of this motion is really premature by thirty days. And the reason its premature by thirty days, Your Honor is, number one, we know the timeframe that the company has in order to get out by the end of the second, or the beginning of the third quarter. And number two, its premature because since Highland has made its proposal on December 21, the company has looked at that proposal and has responded in the evidence, in exhibits number 117 and Exhibit 34, and in a way that reflects that they acknowledge that there's a better deal on the table. And we're suggesting, let thirty days run to see if we can flush that out before 100 million dollar hurdle is put up.

For example the Rothschild work has shown, both on

December 22nd and two days ago, that the cash recovery for unsecured creditors is more certain than the treatment proposed for other creditors.

Number two, recoveries for the common shareholders are higher, under the Highland proposal. And as counsel for the equity committee has stated, this is likely the return for the equity is a preeminent -- we are the holders, we are the stakeholders here because all the other creditors under the proposed framework anticipated plan are going to get paid in full.

Number three, that with respect to the governance that -- the governance issues that the Court ought to let the process play out without a 100 million dollar threshold to see if the corporate governance issues can't be straightened out and are not approving what Rothschild called, not the best practices.

And fourth, most importantly, Your Honor, with respect to the registration rights offering. The company believes that the Highland proposal of doing a registration rights offering, either as part of a plan or after a plan, is a material benefit that eliminates transaction risk. And they've acknowledged that.

So -- so our suggestion is, since -- since December 21, and you had Christmas and you had New Years, so much acknowledgment by the company has taken place of a better deal,

that before Your Honor approves a 100 million dollar threshold to continue talks on that better deal. And we have thirty days to talk about it and let the company further investigate or let anyone else come in.

Now, I don't have an answer to your question you asked counsel for the equity committee, who's going to be at the table tomorrow if you don't approve it. I don't have that answer. Now, it's a -- you said it's a game of chicken but a lot of money's been expended by Cerberus and Appaloosa. But irrespective of that, it seems to me that what's going to be approved today as a 100 million dollar hurdle with respect to a transaction, the company's already found there's a better one out there.

And I think, what we're saying is, let that play out. I think the equity committee suggests that, the U.S. Trustee suggests that. What we suggest is, let that play out for a limited timeframe. Come back and if there's nothing there, approve this transaction. But before you approve that transaction, let it play out because the company has already acknowledged that the Highland proposal, or possibly others that might come in would be better. It's been a very short timeframe since December 18, and it has that two holiday days, and yet the company's made great strides in looking at the transaction and say many, many parts of it are better.

What they have also said is that execution risk.

There hasn't been time to sit down and talk with the company or the other parties in interest to eliminate that execution in the fifteen or sixteen business days that have happened, when probably for ten of them no one was around during the holiday season. But a lot of strides have been made. And we suggest that before you shut the door and put a 100 million dollar price tag on opening that door you let this play out a bit.

That's what I have to say. Thank you.

THE COURT: Why do you pick thirty days?

MR. PARKINS: Well I picked thirty days, Your Honor, because it is -- we are cognizant of the sensitive nature of getting due diligence done -- due diligence started and due diligence done. As you heard in the evidence yesterday, Cerberus and Appaloosa and Ripple Wood had three to four months of due diligence. We don't want to prejudice the end game for Delphi of not being able to get somebody else in, do the due diligence and get it done in a timeframe that doesn't prejudice Delphi's desire to exit in the right time. This is a big deal. This is a big transaction. These people that have signed up -- these documents have had three or four months to do due diligence. We suggest that we would do it in six weeks to two months. But it seems to me that we need to play out, a little bit, whether or not that can happen in the next thirty days before you put a 100 million dollar price tag.

I'm not arguing that 100 million dollar price tag, if

you look at M and A deals or breakup fees doesn't fall within the parameters that courts have approved. I'm not going to argue that. It's 100 million dollars. And we've just had this deal on the table since December 18. And the company has acknowledged that the Highland deal is a better economic for the company, subject to execution risk. Let there time -- let there be time, Judge, to close that execution risk question yay or nay before you approve a 100 million dollar hurdle. That's why. We're sensitive in getting this done, we wanted it quickly. We're sensitive to them wanting to get out of bankruptcy, that's why we suggest this timeframe.

Thank you.

THE COURT: I'm sorry. Still thinking. The -- the debtor has the right, as do other parties, to terminate the investment agreement, which has the alternative transaction fee in it, at the end of August. I take it your client believes that's too late, from his testimony.

MR. PARKINS: The end of April -- I mean, you said the end of August.

THE COURT: The end of August.

MR. PARKINS: Yeah.

THE COURT: Right.

MR. PARKINS: Yes.

THE COURT: That -- that's your -- okay. I just wanted to make sure I understood that correctly. Is that --

that's his view, that its too late?

MR. PARKINS: Yes. We think -- we -- we believe that -- we take to heart what we've heard from the debtor, that they need to get this transaction done. We take to heart, also, the debtor's own analysis that, in many respects, our deal is a better transaction. That's in the evidence not disputed, subject to risk of execution. We haven't had time to even talk to the debtor very much because it's been Christmas holidays and we've been getting ready for hearings and taking depositions, or any other parties to try to see if we can close the gap on this risk of execution.

A 100 million dollar hurdle is a big hurdle to put on there without giving sufficient time -- a little time to let those discussions happen, Judge. Thank you.

THE COURT: Okay. Thank you.

MR. SEIFE: Good morning, Your Honor. Howard Seife from Chadborne and Parke. We're counsel for Eagle Rock Capital, a significant shareholder from this case. We have not filed a position or objection to the pending motion, but we would ask leave of the Court to address one or two questions which the Court posed.

This Court asked, specifically, what process -- what procedures could be put in place, perhaps, to facilitate other parties coming forward. And our concern as a significant shareholder is just that, to maximize value. And we're not

taking a position today either for or against the transaction or the motion, but we do feel that there are specific steps the debtor could take to facilitate a more open process and to facilitate the ability of people like Highland to make a bid and perhaps create greater value for the estate.

In particular, what we're looking for is the debtor, not just to go through the motions here, but let's have Rothschild conduct an active process of qualifying bidders, of keeping the data room open so if there are qualified bidders, they have access to it on an expedited basis. And perhaps, most importantly, we were disturbed to hear the testimony from Mr. Daugherty of his difficulty in obtaining a non-disclosure agreement which would permit him access to the confidential information and the data room. There should be a standardized form of agreement that parties could enter into that will facilitate a real open process here. And I think the debtor as well, should be cognizant to their fiduciary duties to facilitate communications with General Motors, because obviously that's a big gate keeper here in the process going forward. So --

THE COURT: Well -- okay, no, go ahead.

MR. SEIFE: And the final point is, we need real timelines because we are very sensitive to the exigencies of the case, of the looming deadlines in the union negotiation. But parties need to know what the timelines are so they could

enter into the process. So we're not suggesting that this not go forward, but by the same time there has to be the ability for other parties to -- to play on a fair and level playing field.

THE COURT: But isn't it -- isn't it clear, from this hearing, that as far as the timeline is concerned, if you're a bidder, you know, get going right now? I mean, I don't see that there's any -- any doubt about that.

MS. SEIFE: Absolutely. There is -- it is clear to everyone they have to move quickly. But if they don't have access to the data room and there isn't an NDA that's in --

THE COURT: Well, I want to -- I want to turn to the non-disclosure. My impression, and there wasn't a lot of testimony about this, is that -- except I believe what was stated was that the form of NDA offered up was essentially the form that the other parties had signed in the case. That makes sense because they would have -- they -- the key parties in the case have been privy to material non-public information and -- and to talk about that with each other they would need to be bound by the agreement. The only other testimony was Mr. Daugherty's testimony about, you know, the debtor acting like his mother. And on that one, I don't know whether that's in the other NDAs or not -- Mr. Butler's nodding yes. But I understand it, in this context, given the difficulty of negotiating agreements with GM and the unions. In some

measure, also, the -- the legal requirements of the debtor negotiating with the unions -- and it strikes me that if the debtor is to act as a proper fiduciary, it does have to keep some control over that process. It has to balance the function of getting a higher alternative proposal with the function of not letting that process disrupt these key negotiations. I mean, if -- if -- if those negotiations are not conducted sensitively, you could certainly lose this window. So, I guess, other than saying to the debtor something that I believe came through pretty clearly in Mr. Miller's testimony already, that they already understand, which is that they are fiduciaries for all constituencies. And in this case that includes, clearly, making an opportunity for a real bid. I'm not -- lifting that restriction, to me, on having the debtor available, at least having the right to be available if it chooses to, is one that's -- that's a risky proposition to lift that completely.

Now, if someone feels that the debtor is stonewalling them or is not giving them the opportunity for a key meeting or meetings, it seems to me that they're -- that bidder is going to find a very receptive audience in the equity committee and its professionals and they're going to come to me immediately. I mean, they don't hesitate to call up chambers on a lot less important things. And we hear about them, you know, and they're dealt with very quickly. And so I don't know, other

than giving -- reiterating, sort of a general sense of direction, I think it's hard to -- to say that, you know, the debtor is wrong for not insisting on that type of provision.

MR. SEIFE: I agree, Your Honor, these are very sensitive issues and the debtor has, obviously, valid concerns. But I found Mr. Daugherty's testimony particularly concerning. If he can't even get started in the process because of the inability to negotiate the terms of the NDA.

THE COURT: He could get --

MR. SEIFE: And, you know, perhaps --

THE COURT: -- he could get -- I mean, what I took away from his testimony is that he wasn't going to get started in the process because he wanted that one term out. And I'm basically saying, I'm not sympathetic with that. I think the term should be in there. I'm assuming he's not going to go -- I'm assuming they wouldn't -- sure they'd listen to him. Of course -- anyone would listen to him, but I doubt that the union and GM would pay a lot of attention to him until he's actually spent more time going through the data room.

MR. SEIFE: Right. But this is a gate keeping issue to get in the data room.

THE COURT: I understand but I'm still --

MR. STEIFE: And this is going to come up with each potential qualified --

THE COURT: And maybe by saying what I'm saying, what

I'm making clear is that they shouldn't assume, in fact they should assume the contrary, that they're going to win that gate keeping issue. I think the point they'll win on is if the debtor is using that power in a way that's -- that's not in keeping with its fiduciary duties. They'll win on that point. But I think that it's -- given where we are in the process, and given the fact that -- where it comes up, in particular, is in discussions with third parties, namely GM and the unions -- I think the debtor needs to keep some right, at least, to have control over that process so it doesn't go haywire.

MR. SIEFE: Thank you, Your Honor. As long as its clear, which I think Your Honor has made clear, that if the debtor isn't playing fair --

THE COURT: Yeah, then it's clear.

MR. SIEFE: -- that you're available --

THE COURT: I agree with that.

MR. SIEFE: -- for immediate application.

THE COURT: On very short notice. As far as the data room is concerned, I took Mr. Resnick's testimony to mean that it's there and it's going to say there. I mean, I -- they'd be crazy not to leave it there. They've paid a lot of money to have it there and it should be there. And I'm assuming that they're going to be updating it. They're going to -- in essence that's going to be the basis for any discovery in connection with confirmation. So -- right, Mr. Butler, I mean,

you're going to keep the data room in place?

MR. BUTLER: It's not one data room, it's a multiple, I think.

THE COURT: Right.

MR. BUTLER: Your Honor, we actually have a very elaborate process of providing information in electronic data rooms and other rooms. And that is being maintained. We're tracking all the information we're giving to people and we will be able to work with individuals to provide information on a timely basis under the appropriate conditions.

THE COURT: Okay. And then, I guess, the other point that Mr. Daugherty raised, I haven't addressed this -- I really focused on dealing with GM and the unions, is he mentioned that he needs to talk to potential financing sources. Well, in today's world a potential financing sources is also a potential trader or an actual trader. And then I'm even less sympathetic there. There's got to be a way for information to be shared. And I mentioned this earlier. I am, in this case in particular, sensitive to the issue of there being two types of shareholders, the moms and pops, and the former employees who hold a fairly small amount of stock, and people who can amass a large amount. And I think that it is appropriate in those circumstances for the debtor to keep some reasonable rein over the process of sharing information about itself and it's plan process with people who are potentially in the marketplace,

over and above just having them sign a confidentiality agreement. Because the potential for mischief there is pretty high.

MR. SEIFE: Thank you, Your Honor.

MR. BUTLER: Brief response, Your Honor, or do you want to hear from --

THE COURT: Okay.

MR. BUTLER: Your Honor, just a couple of points. Just for the comfort of the Court on the NDA issue, the -- one of the things that's in Exhibit 117, that the Board of Directors considered in connection with the Highland deal was actually a black line of the Highland Capital NDA against the Appaloosa NDA. Because one of the things that the directors wanted to look at was -- were the differences, and looking at the issues, and these issues that were communicated to Highland on January 10th, after the conclusion of the board meeting by Mr. Miller, were testified to, was based, in part, on the Board's itself review of what Highland was demanding and the Board's determination that it was unacceptable.

I also, and I want to say this gently and gingerly because we do view Highland, our second largest shareholder, as a legitimate source of potential interest in the company, however I would not agree with what Mr. Parkins said three or four times in the record, that the debtors acknowledge that the -- that in testimony or otherwise, that Highland is the better

bid. That is not the case. And in fact, that is contrary to the guidance that Mr. Daugherty was given by Mr. Miller and that Mr. Miller testified to. And for obvious reasons on this record, I'm not going to go through the guidance that Mr. Daugherty was given, and we didn't do it in the hearing yesterday, but Mr. Daugherty was given very specific guidance on three things that Highland needed to do for the Board's determination that it was premature to work with Highland to have that issue revisited. And there was a very explicit statement communicated to Mr. Highland -- rather, excuse me, to Mr. Daugherty on behalf of Highland from the Board of Directors of the company.

I also think that Highland's objection here, generally, Your Honor, you know, ought to be given some discounted consideration. In fact, there's nothing in this record -- in fact, there's no information the company has that the December 21st proposal was anything other than an expression of interest, which has been amended twice. First on December 29th in a pretty immaterial way and then on January 9th, in the company's view, a number of material ways. The complexity of this transaction is also highlighted by the fact that given GM's very public statements that if, in fact, Highland's view of value is correct and there's a couple billion dollars more here, General Motor's view is that that -- that value or some fair share of it, belongs to them and they

would no longer be supportive of the PSA because they're not prepared to put six to seven and a half billion dollars into the company under those circumstances.

And I'm mindful of Mr. Scheler's comments on this record, that the equity committee would have a different view as to what their fair share is. But what that tells me is, that the Highland offer is not an apples to apples offer. If, in fact, Highland's view of value is correct there will be another round of discussion among the stakeholders about how that incremental value will be shared. And it would be incorrect, and the Board determined it would be incorrect, to assume that simply -- that incremental value, if it existed, belonged exclusively to one stakeholder in this company.

The -- I also think that Mr. Daugherty's testimony, when one strips away the public advertisement of his offer, which is what a good deal of the testimony was about, in fact needs to be evaluated from a credibility perspective on the fact that Mr. Daugherty, one of the twelve partners of the firm and the person who runs their distress practice, couldn't even remember how Highland accumulated its holdings or that it passed the five percent threshold within the last sixty days on its way to moving from below five percent to above 8.8 percent of the stock. I think Mr. Daugherty, you know, probably has a very good recollection of those issues and -- and I also was struck by the fact that they conceded that they had been

calling Mr. Tepper and others since November 1st, but also acknowledged they didn't contact the company at all, ever, since December -- until December 21st, some six weeks later. And I would say again here, and Mr. Scheler and I have had these discussions. If there are, in fact, people out there in the world that have superior transactions they should contact the company. The plan investors know that we have a fiduciary duty to deal with those matters and that we will exercise that duty along -- along the lines that Mr. Miller testified to yesterday.

Having said that, the company couldn't be more -- in more disagreement then with Mr. Parkins' view that we should just take a delay. Take a timeout here and wait. Nor are we, and it's not a surprise, I think, either to Ms. Steingart or Mr. Scheler or to their principals, that the company is not -- does not believe that an auction of the kind they describe, which is what their process -- their word process is code for, auction. Now, I think Ms. Stiengart said we should have four, five or six real bidders out there and move into an auction process. Our view, and Mr. Sheehan and Mr. Miller both testified to it, I thought, eloquently, is that we are not going to be able to move forward, in the company's judgment, in a material and meaningful way with our unions, all of whom have lawyers sitting in this room taking down -- through this entire hearing, or General Motors who is similarly situated. If they

don't have an understanding of who the plan investors are, knowing full well that if we -- that we have to operate in connection with our fiduciary duties. I think -- I think I'm -- I expect, I believe that our unions and General Motors will negotiate with us and the plan investors in a meaningful way even though they understand the possibility of something else happening with respect to us fulfilling our fiduciary responsibilities because we've had those discussions.

But it is a time, here, to move forward. And the debtors believe, and in the timelines we have in place, Your Honor has seen those timelines, Exhibit 54, carries forth the timeline which is even up on the chart here, which makes it very clear what the timetable is in order to be able to have a meaningful opportunity to emerge from Chapter 11 before the summer is out and the quadrennial labor contract negotiations in the auto industry begin. And it's a very ambitious timeline. And ultimately we need to get about it. And the timeline calls for having agreements with our unions and General Motors by the end of this month, which is going to be very difficult to do given the delay of these hearings which were necessary, and we're not debating them. But -- and then it gives us a recovery period during February to try and finish any of those things off. But we have to get about the business of doing those things.

With respect to Ms. Steingart's argument, I simply

think I need to say for the record to be complete here, that the company does not -- the debtors don't agree with her characterization of the evidence, nor do I view that the evidence actually would support many of the things she said that it would support. And nor does the company agree with the characterization, nor could she point to anything in the documents that would say that the debtors are going to simply exercise their minimum duties. That characterization, I have to tell you, is entirely offensive to the debtors and its retained professionals who believe that they have worked night and day to exercise their fiduciary duties in a responsible manner as this Court would expect us to and we'll continue to do that.

The last comment I would simply make, Your Honor, is something that I guess the objectors would have the Court ignore. And that is, that we've had a process here. This process has been going on, now, for half a year. And it's a process that the parties participated in, as I said before, I'm not saying people agreed with every part of it -- part of the process, but there was a process. And it took an enormous amount of work to try to find a combination of qualified plan investors that we could get General Motors, who has to agree with us, and has to provide six to seven and a half billion dollars, that's the public estimate, of value in -- with labor, to get labor on board, that it took half a year for us to be

able to find the combination of people that General Motors would indicate that they thought would be an acceptable group of plan investors to negotiate the final deal with. And that process had enormous transparency to our stakeholders. So there's been a process here. The debtors will, if you approve these agreements as we hope you will, the debtors will, in fact, continue to exercise their fiduciary duties in the fullest sense of that meaning if there are superior offers that are presented to it.

THE COURT: Okay. Can we spend a minute on the request for the 6004 waiver -- the waiver of the ten day --

MR. BUTLER: Sure.

THE COURT: -- statutory stay? It seems to me, given the final order condition anyway, and the fact, obviously, that there's been an actively prosecuted objection, that that's a pretty heavy burden to overcome. What's the basis for waiving it?

MR. BUTLER: Well, Your Honor, the requirement -- the requirement of our investment agreement is that we have a final order by the 20 --

THE COURT: Second, right.

MR. BUTLER: -- of this -- of this month. And the -- and that's the -- that's the only requirement that we have in connection with the order.

THE COURT: Okay.

MR. BUTLER: There was -- there was -- the -- the -- I think the reason for it, and the testimony you had, is the importance of trying to communicate to our unions and General Motors who we are already weeks behind in trying to move these negotiations forward, that in fact there's finality with this particular piece of the puzzle. I mean that's the fundamental issue --

THE COURT: All right.

MR. BUTLER: -- which is, you know, the every day that -- our belief is and I'm -- Mr. Miller and Mr. Sheehan testified to this, every day that the -- we think -- that labor and General Motors do not believe that we have a path here, subject to a fiduciary duty, but a path, is a day that we will not make progress on those issues. And people are going to say, well, gee, that -- it should be different but the fact of the matter is people who are making billions of dollars of concessions and labor unions who are being asked to transform the way in which they do business with us, have made it very clear over the first fifteen months of this case what their expectations are. The stakeholders know it, the committees know it, the debtors know it. And we can, you know, there's a lot of -- I've heard a lot of people say a lot of things here and I wish I could waive a wand and make things different. But there's a reality to this case that we all better face if we're going to create value. And that's the issue, Your Honor. And

that's why it's in there. It's because there's a --

THE COURT: But it's not in the agreement its in the motion.

MR. BUTLER: Correct.

THE COURT: All right. Well, I think you -- I think you've -- well, not only you but I will make the point clear that the -- the need to move quickly is absolutely clear. But on this point, I think that -- particularly given the final order provision, which of course can be waived as well as the objection -- that I would not waive the statutory ten day period. The short answer is that I think you can do what you need to do during that period in any event.

MR. BUTLER: Thank you, Your Honor.

THE COURT: So you won on that one.

MS. STEINGART: Thank you.

THE COURT: Okay.

MS. STEINGART: Nice to have won. Briefly, Your Honor?

THE COURT: Real briefly.

MS. STEINGART: Very, very briefly, Your Honor.

THE COURT: All right. When I say you, I was addressing Ms. Steingart, for the record.

MS. STEINGART: Right. Now the debtors have just acknowledged, or acknowledged in the papers they've filed, that GM has been a serious wrongdoer with respect to the debtors for

a substantial period of time. That there are --

THE COURT: Is that what Mr. Butler said?

MS. STEINGART: There are colorable claims and there are colorable claims -- that's what they said in their papers here.

THE COURT: Well, there's a lot -- there's a lot between the word colorable and saying that they're a serious wrongdoer so --

MS. STEINGART: Well, there are serious claims here, Your Honor.

THE COURT: That I -- I understand that.

MS. STEINGART: And the committees -- both committees agree --

THE COURT: I understand that point.

MS. STEINGART: Both committees agree, in their view, that GM is a net obligor to this company. So now Mr. Butler's telling you that shareholders take subject to GM deciding which bidder is appropriate for this debtor to talk to. Your Honor, that's outrageous. Okay. Mr. Butler said he wants --

THE COURT: But -- wait -- wait a minute. Didn't Mr. Daugherty say, and hasn't this whole process been designed to arrive at a consensual resolution of those thorny issues? That's all Mr. Butler is saying, is, he's looking -- he puts a premium on consensus, as I'm sure GM does too. And that ultimately there's more value for the estate out of consensus,

including from GM, then in litigating over the next several months.

MS. STEINGART: Well, Your Honor, we too want consensus, but we don't want GM to be in a position where its dictating the investors that this company may talk to. And that's what -- that's the description, I think, that I had just heard. That GM was willing to talk to these three, to deal with these three to get to the point we are today. And, Your Honor, the committee likes the point we're at today. We like very much that there's this deal that's been developed. And indeed that these investors had invested so much time and so much effort and stand so much to gain, they're not going to walk away from it.

Mr. Butler said he wants finality. Finality means he's not talking to anybody else. That's the problem. That's why we need the process. The unions are not going to reject a serious bonafide person. Mr. Butler's not in a situation where talks can't proceed because at this point, given the process, this Court's concern, constituency concerns, the unions have proceeded responsibly. And don't think that any of us are here to create a situation where they can't negotiate their concerns in good faith.

THE COURT: Okay. But I -- I'm going to cut you off because I think you're going over ground that we've already gone over.

MS. STEINGART: So that, you know, so I think that unless this Court imposes a process that this value will be given away without any real market test, since this debtor went to bankruptcy it's only spoken to three people, Your Honor. It should be required to speak to more than that.

THE COURT: Okay. All right.

MR. LAURIA: Your Honor, this is Tom Lauria.

THE COURT: Yes.

MR. LAURIA: I wanted to come back and respond to the point that we talked about earlier. And actually there was one clarification I also wanted to make, to the extent it wasn't clear on the record.

THE COURT: Okay.

MR. LAURIA: I've been able to communicate, with my client, and they have confirmed that they will agree to changes in the order to provide that they will file a 503(b) application with respect to the pre-May 17 fees and expenses that they have incurred.

THE COURT: Okay.

MR. LAURIA: And the second issue I wanted to mention, in literally just thirty seconds. Much has been said about the value for the ten dollar discount on the conversion of the preferred stock under the deal. And I just wanted to make sure that the Court was connecting the dots in the fact pattern here. That the rights offering deal which was on the

table before the preferred was built into the structure contemplated that exact ten dollar discount to all the shareholders. Indeed the rights offering is still a rights offering at thirty-five dollars per share, to all of the shareholders. So to the extent that there is value there, its going to all of the shareholders. When the preferred was layered into the deal, every party in this discussion agreed and nobody ever questioned that the preferred can convert at the same price that the stock is being offered to the shareholders by the rights offering. And I just wanted to make sure that that fact was known.

THE COURT: Well, when you say every party, does that include the equity committee?

MR. LAURIA: Yes, it does, Your Honor.

THE COURT: Well, all right. In any event, I'm not -- I'm not ruling, as I said before -- as I said to Ms. Leonhard, I'm not ruling today on the -- to the U.S. Trustee. I'm not ruling today on the underlying plan or any elements of it. So --

MR. LAURIA: Your Honor, I just wanted to --

THE COURT: No, but I -- I -- that's fine. I -- you're certainly entitled to say that. And some of the witnesses brought out some of the points you've raised as well. All right. Okay. Anyone else? Not that I'm inviting anyone, but -- okay.

I have in front of me a motion by these debtors for approval of their entry into two agreements that are related. The first being an equity purchase and commitment agreement that I'll sometimes refer to as the investment agreement, between them and several investors, including as the primary ones Appaloosa and Cerberus, at least that's how I'll refer to them.

Secondly, a plan framework support agreement, or a PSA or support agreement, between those same entities and also with General Motors Corporation. Specifically in addition to approval of the debtors' entry into those agreements, I'm being asked to consider approval of various fees that are provided for under various circumstances to be paid to the investors under the investment agreement. These include professional fees in connection with the proposed investment transaction that have already been incurred as well as similar fees going forward; secondly, commitment fees, which are staged to occur during various milestones -- or to be incurred during various milestones over the coming weeks and months; and finally, under two circumstances set forth in section 12(h) of the investment agreement, an alternative transaction fee. That is because these investors have agreed, under certain conditions, to make a substantial investment of cash in the debtors in return for equity, preferred and common, and to backstop further a rights offering to the existing common shareholders to the extent that

that rights offering is not fully subscribed.

The agreements, and in particular the investment agreement, have been modified from time to time since December 18th when they were initially entered into by the company. The plan framework support agreement lays out, as it is titled, a framework, pursuant to which the investors, the debtors and GM will resolve certain key issues in connection with the development and eventual confirmation of a Chapter 11 plan for these debtors. The Court has not been asked to approve the framework for the plan and the debtors are not bound to obtain confirmation of such a plan and certainly no party is bound to vote in support of such a plan. But the parties have committed themselves to work in good faith to implement the terms set forth in the framework agreement.

In some respects, then, the relief that the debtors are seeking -- the debtors seek today -- is not particularly momentous in these cases. And that's not to belittle the amount of the fees that I'm being asked to approve; this is, in terms of dollar value, an enormous transaction and on a market assessment, both the professional fees required to implement such a transaction as well as commitment fees and a breakup fee or alternative transaction fee are all large because of that fact. However, it's also clear to me that the approval of this motion and the transactions that it contemplates is, in fact, if not legally in terms of the direction and conduct of these

cases, highly significant. And I believe it is hoped by all parties, perhaps with some exception on behalf of the equity committee (although even the equity committee acknowledges that its very pleased with the where this case stands at this point), a watershed event in the case. That is because of the unusual nature of this case. This is not a simple case (and sometimes very large cases can be simple, in which the main issue is the determination of total enterprise value): this is a case with the potential for truly endlessly moving parts. Because here, total enterprise value is less the issue then net recovery to the parties. And that -- that recovery -- and to some extent total enterprise value as well, depends upon the resolution of the debtors' labor and retiree and pension related issues, as well as the resolution of the debtors' issues both businesswise, as well as in terms of potential avoidance actions and other contract rights and claims, with General Motors, its largest customer.

But, as I noted before, there's real circularity in that process, because it is difficult to resolve those two issues without understanding the debtors' enterprise value and future sources of financing.

Consequently the debtors, several months ago, at the beginning of August, after consultation with both their official committees, entered on a process that would not, in the short term, attempt to resolve the labor and GM related

issues, but would, instead, try to resolve issues pertaining to the net recovery to all parties in the case. That, very quickly, although it took several months to implement, became a process that involved discussions with the potential plan investors or plan funders. It also involved discussions with GM to the extent that they're memorialized in the PSA. It is the evidence before me today, but it's also simply a matter of logic, that knowing the willingness of third parties to commit to fund a substantial amount of new money both helps to confirm the debtors' total enterprise value as well as greatly facilitates the ability of the debtors, GM and the unions to negotiate the remaining issues between them and among them by knowing that the path to ultimate exit from those negotiations is relatively clear.

The standard for the Court's consideration of a motion like this is also a relatively clear. The Court needs to consider whether an action out of the ordinary course of business under section 363(b) (which the debtor's entry into these two agreements is) is a decision that is supported by good business judgment. That is the case, assuming, as I find here, that the debtor has acted on an arms-length basis without any taint of insider dealing or the like. And as I say, I find that specifically here based upon, among other things, Mr. Sheehan's testimony and Mr. Miller's testimony. Indeed it appears to me that the debtors have extensively consulted with,

not only -- and acted through -- not only their Board, which is an independent board, but also with the two official committees and other key constituents in the case.

So, consequently, I review this matter as a matter of business judgment. The second circuit in In re Orion Pictures Corp. 4 F.3d, 1095, (2d Cir. 1993), albeit in the context of a decision under 365 of the Code, but I believe it's equally applicable to one under Section 363(b), states that such decisions are made by the Bankruptcy Court in the exercise of its business judgment, stating it is important to keep in mind that the Bankruptcy Court's business judgment in deciding a motion to assume (in this case to take an action out of the ordinary course) is just that, a judgment of the sort of a businessman would make. This business judgment could turn out to be wrong but hopefully it won't. That view, I think, is also supported by the Second Circuit's decision in In Re Financial News Network, Inc., 980 F.2d, 165, in which -- I'm sorry (2d Cir. 1992), in which the Second Circuit stated that "this appeal concerns the difficult balancing act the Bankruptcy Court must perform when it conducts an auction of a debtor's assets. It walks a tightrope between, on the one hand, providing for an orderly bidding process, recognizing the danger that absent such a fixed and fair process bidders may decline to participate, and on the other hand, retaining the liberty to respond to differing circumstances so as to obtain

the greatest return for the bankrupt estate." Obviously there the Second Circuit was talking about a formal auction. But I believe its logic translates also to other requests for approval of actions out of the ordinary course in which the Court has to balance various concerns pertaining to the merits of the transaction that's brought before the Court, which may go beyond dollars and cents but also relate to issues such as time and the effect that it may have on the case generally.

Now that being said, the courts are also quite clear that, under normal circumstances, if a board that is not affected by a conflict of interest or other self dealing properly considers or has properly considered such an action, that the Bankruptcy Court will, absent evidence to the contrary, defer to the board's business judgment.

That is set forth at length by Judge Mukasey in Integrated Resources Inc, 147 BR 650, SDNY 1992 and in numerous other cases from this district applying a business judgment standard to actions out of the ordinary course. I have to say, however, though, and particularly in light of Orion and FNN and even Judge Mukasey's decision (where notwithstanding his view that the board acted properly for purposes of the business judgment rule, he himself analyzed a proposed breakup fee transaction closely and carefully), that particularly where there are objections by official committees or other key constituents in a case, I will go beyond mere deference to a

board's business judgment and review the agreements themselves closely and consider the issues raised by the objectors, again, particularly those who are fiduciaries for constituencies in the case, like official committees.

I think this is also appropriate given what frequently if not always occurs in these situations, particularly where they are contested (and which certainly occurred here), which is that proposed transactions frequently are amended before final approval. So that the focus does, ultimately, become a fairly objective one within the Court's own review.

So, while I find that this Board -- the debtor's board -- is not only independent and without conflict but also one that acted with due care and responsibly and with a welcome degree of responsiveness to the views of their constituents, I've also reviewed the transaction, separate and apart from the Board's consideration, in light of the objections raised and my own concerns. And I'll note further that I have not hesitated in the past to disapprove transactions that called for breakup fees and expense reimbursements, as the objectors pointed out both in the WestPoint Stevens case and in the Refco case.

Here, however, I will approve the motion as modified (as late as this hearing, at least in connection with the change made by Appaloosa at my urging). I do so because I believe, first and foremost, that these two transactions, the

debtors' entry into them, are a proper exercise of the debtors' business judgment. I further conclude that the fees that I described earlier are each appropriate under the case law and practice as well as a proper exercise of the debtors' business judgment.

As the Integrated Resources decision makes clear, there are at least three purposes for approving, in advance, the payment of professional fees and a breakup or alternative transaction fee to a third party making an investment in or purchasing an asset of a debtor's estate. To my mind, the key reason to do that here is so that the debtors, having attracted a potentially successful bid and one that will facilitate the resolution of the remaining open issues in the case, do not want - the debtor does not want, legitimately, that bidder to retract its bid, which it has the right to do under its agreement.

Further, although I believe that the record is clear that the window for other bidders to make a higher and better offer to the debtors is a narrow one, I believe, as a secondary matter, that the investment agreement will establish a basis for other bids to be made and will attract additional bidding. Indeed I think the evidence is clear that it was the filing of this bid -- and I'm using the term bid as shorthand -- that attracted the Highland bid. As Mr. Daugherty testified, he read the bid, believed that his firm could do better, marked up

the bid as he thought was appropriate for his company, and sent it to the debtor.

The objectors here, particularly the equity committee, take the view that because the debtor is not engaging in a formal auction process or a process with at least a greater formal structure around it with more active shopping or more of a direction to the debtor than has already been expressed by the Court, that this approach is insufficient and that it unduly restricts the sale process. As I said before, there have been times when I've disapproved alternative transactions fees and the like based on such considerations. Either, as in the case of Refco, because I believed that the proposed stalking horse bid was so unclear and so full of outs and options that in effect no one would know what to bid against. Or, as in the case of WestPoint Stevens, because I believed that the stalking horse bidders were so imbedded in the capital structure already that they did not need further incentive to make their proposal. Now it might be argued that since Appaloosa and perhaps other investors are creditors and shareholders already of the debtors that the same consideration should apply here as well. However, in WestPoint Stevens the proposed stalking horse bidders were, with a small dollar exception relatively speaking, making a credit bid of their debt, not putting in new cash. More importantly, unlike here, those proposed stalking horse bidders had over fifty-one

percent of the claims that would be paid, ultimately, in the bid. And that's clearly not the case here. In other words here, in a large measure, a more than preponderant measure, this is new money coming into the debtors with a real risk.

In both of those cases also, there were third parties who stated, like Highland, that they were ready, willing and able to bid already and that they did not need a -- the debtor could take the risk that it would lose the transaction in hand because they were there to step right in.

I accept that Highland is bona fide. It has retained capable counsel and has spent a fair amount of money in pursuing its proposal. But in this case I'm not prepared to take the risk of clearing the table in the hope that others will come to it. I say that not only because the Highland proposal at this point is, in my view just in terms of timing, significantly behind the other proposal of Appaloosa and Cerberus (and as an aside, that difference is something that can at least, in some measure, be ascribed to Highland itself given Mr. Daugherty's testimony that he was aware that there was a potential for alternative transactions, at least pointing back to November 1st), but also because this case has important timing considerations.

So before turning to those considerations let me summarize by saying simply as a matter of reviewing a breakup fee on a standalone basis here under the criteria laid out by

Integrated Resources and the other courts, I believe that the deal is now structured -- commits the investors sufficiently that it is within the debtors' business judgment to keep them committed.

In addition, as I noted earlier, because of the dynamics of this case, I believe that it is of critical importance for the debtors to have the ability to show GM and the unions that this path exists. The record is clear, and I believe undisputed, that all the parties in this case, and in particular the debtor, the unions and GM, face an opportunity over the next weeks to resolve their issues in a way that's beneficial to all. And if that opportunity is not taken, given the fact that the national labor agreements expire this fall and the GM benefit guarantee would consequently apparently expire as well, the case could -- and all parties' recoveries and the business could -- be adversely affected in a way that I believe no one wants to contemplate. With this agreement in place, the unions and GM, as well as the other parties in interest, can see a structure that they can complete.

You all are probably tired of this metaphor but since you used the term “framework”, I'll go back to the view that the debtor with what it has negotiated thusfar with the investors and GM and the creditors committee, has set up a framework for a building or house. GM and the unions now have the opportunity to complete that framework with the debtors and

the investors. I'm assuming the house and the framework are roomy enough so that they can do that even though it may not be the exact architecture they like, because the alternative could be an unfinished building or a shack, alternatively. In other words, the existence of these agreements with both the investors and the debtors committed to the extent they are, and I believe with the amendments to the agreements those commitments are real and worthwhile, the parties know what they can achieve. And knowing what they can achieve, I believe, makes them accountable for not achieving it: not to me but to their constituents, to their own shareholders and to the unions' members.

The debtor, very properly, said that it not only intends to bargain but has bound itself to bargain. So obviously, as I said to the U.S. Trustee, these agreements do not represent a done deal as far as the plan is concerned or as far as the labor negotiations are concerned. But they do, in my view, materially facilitate the resolution of those issues.

Mr. Miller testified to the fact that the Board, quite rightly, considered at the meeting that took place on the 9th and 10th of this month, whether in light of the benefits that I just described it should even bother considering alternative transactions as prompted by the Highland proposal. One could make the case for saying “no,” but the Board quite rightly decided, I think, that that's not the right answer and

that it should and must consider them. I believe it can balance that consideration with the need to move ahead quickly, because I believe that all parties in the case, including the unions and GM, understand the need to do that, to move ahead quickly and not to wait and see. That means it is incumbent upon any bidder, including Highland, to move quickly and it is incumbent upon the debtor, while not disrupting the negotiations it has and will undertake with the unions and GM, to facilitate Highland and, if other bidders appear, other bidders' proposals of higher and better transactions.

However, I do not believe that it is in the debtors' interest to take the parties' focus off of the negotiations with GM and the unions. And I believe that conducting a formal auction process or letting prospective bidders, without a measure of coordination and supervision by the debtors, state their case to third parties here - well, the risks of such an approach outweigh their benefits. Under different circumstances I might have pressured the company and the investors to put off the process for thirty to forty-five days. But I don't believe that that can be done here given the need to resolve labor and GM issues promptly. Frankly, I don't believe it's in labor's and GM's interest to do that either, as a matter of fiduciary duty, until they see something far more real, and they will have to decide, ultimately, how to structure their negotiations. But I believe putting them off

to see what comes out is detrimental to all. Given that benefit to the estate, I consider an approval today of the alternative transaction fee to be appropriate.

As stated in my discussion with the U.S. Trustee, I also conclude that the other fees, as provided for in the agreement, are appropriate, as that agreement has been revised on the record.

I also believe, as clarified on the record, that the agreement by GM to limit the circumstances in which it would talk to third parties is something that GM can do on its own. And in fact the way it's doing it here is of benefit to the estate given its acknowledgement that the debtor can bring the third parties to GM for consultation.

And I believe that, as far as the order is concerned, the order is not blessing any sort of misconduct should GM -- or any of the other parties involved in these transactions -- engage in some misconduct. Something I clearly don't expect to occur in any event.

I think I've dealt with this already but, specifically, as far as the remaining objection is concerned, by the equity committee, that the proposed transaction is simply not good enough in various respects to merit tying the estate to these types of fees in connection with its pursuit, I will note that the equity committee has pointed out elements of the transaction -- the ultimate transaction -- that are

objectionable. But I am not approving those elements today nor any -- any elements of a plan as set forth in the PSA. That's for another day. I have concluded, however, in my review of the transaction as a whole, that it is a transaction that is worth pursuing as a basis for concluding the case. There is an opportunity, although limited, for it to be improved on, not only by third parties but also in light of potential impediments to confirmation of a plan. And that's something that will -- that I will have to deal with down the road. On the other hand, as I said before, the debtors have very properly used the term “framework” here as laying out a clear basis by which the other crucial elements of this case can be resolved.

I do not believe, consequently, that these transactions, to the extent I'm being asked to approve them today, would constitute a sub-rosa or a de-facto plan. I do not believe I'm approving a de-facto plan today. I think that the distinction is set forth very clearly by Judge Gropper in Tower Automotive, 342 BR 158, Bankruptcy SDNY 2006, and the circumstances here are even more clear than there, I believe. Nothing from this estate is being distributed as part of what I'm approving today, other than the fees, which are being dealt with on a standalone basis. As I've already explained they're being separately justified.

Let me say one final word about the debtor's

fiduciary duties here. Judge Mukasey in Integrated Resources makes it clear that a debtor in bankruptcy's fiduciary duties are different then a debtor's duties outside of bankruptcy. And, in particular, that those duties are owed to all the constituents. They include a duty to get the creditors paid in full. Based on the record here, while I conclude that if all goes well creditors will be paid in full and that the ultimate result in this case will be one in which various parties are debating how much the shareholders should receive or will receive, that there is a risk to the estate if the debtors do not proceed along the path that this motion enables them to go down that the creditors will not be paid in full. And consequently, I think that based on today's state of facts, the debtors have properly exercised their fiduciary duties considering all the interests of all their constituents.

As I said before, if it appears, as matters proceed, that the debtors are not doing that and that they are improperly shutting out those who legitimately appear to offer a higher and better transaction, then I'm sure I'll hear about it and I'll rule very quickly on that point. But I do not see, here, a debtor who is acting in any other way then one would expect, which is that it's acting fully consistent with its fiduciary duties.

So, I've reviewed the order and with the exception of deleting the paragraph waiving Rule 6004, I'm prepared to enter

that order as it was submitted to me. I don't believe I need to change it in terms of the fee review, because I think that's clear on the record both in respect of the five million Appaloosa issue as well as providing the fee statements to the U.S. Trustee.

MR. BUTLER: Thank you, Your Honor.

THE COURT: Okay. So you can submit that order at the end of the hearing.

MR. BUTLER: We will, Your Honor. Thank you very much.

THE COURT: Okay.

MR. BUTLER: Your Honor, on a related matter, we had scheduled, at 3 o'clock today, the -- a chambers conference on the 365 litigation on 1113 and 1114 litigation. I believe all those parties are in the courtroom. And I wanted to indicate to Your Honor that in light of Your Honor's ruling now the debtors will circulate a proposed order to those parties. First we ask to vacate the conference today. Second, we will circulate to those parties and submit to Your Honor an order that would suspend the 1113, 1114 and 365 litigations for a period of time, probably consistent with the duration of the EPCA so that ultimately -- on that path we won't continue with the chambers conferences and we'll have a proposal in there about how to deal with the tolling of the January 31st date, which I have to review with counsel to the unions. We'll

submit that. We'll circulate that and assuming we have a consent order we'll submit it to Your Honor promptly.

MR. KENNEDY: I'm confident that's acceptable to the unions.

THE COURT: Okay. All right. Okay. All right. I'll do that. I think the key is that it's coterminous with these two agreements. Obviously if they fall apart, I expect you'll be back to me. Although at that point you may be back with a totally different motion.

MR. BUTLER: Right.

THE COURT: Under totally different economics. So -- I'm happy to suspend.

MR. BUTLER: Thank you, Your Honor. Your Honor, our next -- just to get some guidance from the Court, we were supposed to start the omnibus about ninety minutes ago. Do you want to take a break?

THE COURT: Well, I expect there are a number of people here that don't -- don't need to hear about a patent case. Although Mr. Connelly does. And so, why don't I give people five minutes or so, who want to leave to leave. And then we can pick up again.

MR. BUTLER: Do you want lunch?

THE COURT: I was going to have it after -- I don't think there's a lot on, at this point.

MR. BUTLER: Well, there's the -- the omnibus and

then there's a claims hearing after that.

THE COURT: Well, I was going to take a break before the claims hearing.

MR. BUTLER: Got it. Okay.

MR. PARKINS: Your Honor, if I may, do you have the exclusivity --

MR. BUTLER: Highland has withdrawn its objection to exclusivity.

THE COURT: Okay. I had -- I had heard that. Obviously, as with any exclusivity matter, that's without prejudice to any party coming back and saying exclusivity should be terminated. But as far as the extension, I'll grant that extension. I think it's supported by the record.

MR. PARKINS: thank you, Your Honor.

THE COURT: All right. So I'll be back at twenty five of 2.

MR. BUTLER: Thank you, Your Honor.

MR. LAURIA: Thank you, Your Honor.

(Proceedings concluded at 1:27 PM)

I N D E X

E X H I B I T S

RULINGS

C E R T I F I C A T I O N

I (we), court approved transcriber(s), certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, except where, as indicated, the Court has modified the transcript.

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